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DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
WATER RESOURCES DIVISION



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Floodplain management guidebook for local



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July, 1982

PLEASE RETURN

Officials in Townships, Cities, and Counties
participating in Montana's Floodplain
Management Program in conjunction with the
National Flood Insurance Program.

Dear Local Administrator:

Flooding is a costly natural disaster--both in terms of financial loss and the emotional trauma that victims experience. We all know the weather is unpredictable and uncontrollable, and that we will continue to experience flooding. But there are ways to limit the damages from floods through proper floodplain management.

The federal government recognized this in 1968 when it created the National Flood Insurance Program, which requires interested communities to use floodplain management practices in return for subsidized insurance. Montana, too, recognized the value of floodplain regulation and in 1971 passed the Floodplain Management Act, which provides for evaluation and management of flood-prone lands and for coordination between local, state, and federal government in management activities.

Our function at the Floodplain Management Section is to provide that coordination and to assist you in your efforts to comply with the requirements of the Montana Floodplain and Floodway Management Act and the National Flood Insurance Program.

This book represents part of our effort to fulfill that function. It is designed to help you understand federal and state requirements and to administer the floodplain regulations that direct development of Montana's floodplains. Successful administration of such regulations should reduce both monetary and emotional losses due to flooding.

STATE DOCUMENTS COLLECTION

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We encourage you to use this guidebook as you implement your floodplain management program and urge you to call our office if you have questions or need any additional assistance. We are here for you.

Sincerely

John R. Hamill
John R. Hamill, Supervisor
Floodplain Management Section

Timothy S. Pool
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Secretary

May 9, 1985

FLOODPLAIN MANAGEMENT GUIDEBOOK

FOR

LOCAL ADMINISTRATORS

July 1982

Floodplain Management Section
Montana Department of Natural
Resources and Conservation
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Helena, Montana 59620

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WHERE TO GO FOR HELP

Communities can receive assistance and guidance for their floodplain management program. If you have questions or problems, don't hesitate to ask for help. For information about the NATIONAL FLOOD INSURANCE PROGRAM or the MONTANA FLOODPLAIN AND FLOODWAY MANAGEMENT ACT, call or write:

DNRC
FLOODPLAIN MANAGEMENT SECTION
32 SOUTH EWING
HELENA, MONTANA 59620
(406) 449-2864

Assistance may also be available to you from your regional council, or city or county planner. Check these local resources out and jot down a name and phone number here.

Finally, other State and Federal agencies may be able to provide you with direct technical assistance in floodplain management. They include:

FEDERAL EMERGENCY MANAGEMENT AGENCY
DENVER FEDERAL CENTER BLDG., 710
DENVER, COLORADO 80225
(303) 234-6582

MT. DISASTER EMERGENCY SERVICES
1100 NORTH LAST CHANCE GULCH
HELENA, MONTANA 59620
(406) 449-3034

SOIL CONSERVATION SERVICE
P.O. BOX 970
FEDERAL BUILDING
BOZEMAN, MONTANA 59715
(406) 587-5271, ext. 4207

U.S. ARMY ENGINEER DISTRICT,
SEATTLE
BOX C-3755
SEATTLE, WASHINGTON 98124
(206) 764-3660

U.S. ARMY ENGINEERING DISTRICT, MISSOURI RIVER
6014 U.S. POST OFFICE & COURTHOUSE
215 NORTH 17th STREET
OMAHA, NEBRASKA 68102
(402) 221-1221

INTRODUCTION

Flooding is a natural phenomenon. Periodically, rain and melting snow cause rivers and streams to rise and overflow their banks onto surrounding lands. These lands, known as floodplains, are defined by their specific function: allowing excess water to pass. In the past, man built cities along waterways because this assured access to transportation and food. Today, with modern transportation systems, it is no longer necessary to live along waterways. But the beauty of waterfront property has attracted many to build homes, offices, and businesses in these flood-prone areas. This development of floodplains has resulted in continual and, oftentimes, severe social and economic loss.

Traditionally, flood control planning has focused on protecting existing development through structures such as dams, diversions, or levees, and on providing emergency relief and recovery assistance to flood victims following a disaster. Both approaches are very expensive, and neither has been totally effective. Despite tremendous expenditures on flood control works, annual damages due to flooding continually rise.

It is apparent that another alternative is needed--one that gets to the root of the real problem: man's insistence on unwisely occupying flood hazard areas. The National Flood Insurance Program (NFIP) and the Montana Floodplain and Floodway Management

Act provide that alternative. Rather than attempting to physically control rivers, these laws recognize and encourage the need to control development in floodplains to protect people and personal property from harm by flood waters. Their basic purpose is not to prohibit, but to guide development in floodplain areas in a manner consistent with both nature's needs to convey flood waters and a community's land-use needs.

THE GUIDEBOOK

This guidebook describes these two laws, which provide alternatives to traditional flood control measures. It can therefore be a help to all people in Montana communities in understanding the National Flood Insurance Program and the Montana Floodplain and Floodway Management Act. Primarily, though, it is a guidebook for you, the local official, who must comply with the state law and the requirements of the NFIP.

The guidebook is designed to help you in your job by providing detailed information on both the federal and state laws and by offering suggestions for drafting and administering floodplain regulations. These topics are covered in five chapters.

Chapter I describes the National Flood Insurance Program (NFIP). It lists goals and objectives, explains the Emergency and Regular Phases of the Program, and explains a community's responsibilities when participating in the NFIP.

Chapter II explains the Montana Floodplain and Floodway Management Act and the Administrative Rules for its implementation.

Chapter III describes a model ordinance and the construction standards required by the State's Floodplain and Floodway Management Act. Chapter IV explains how a community actually administers its floodplain ordinance.

The last chapter, Chapter V, describes other items a community should consider in implementing a floodplain management program, such as disaster preparedness plans and structural flood control works.

DEFINITIONS

Each of these chapters contains terms commonly used in both the state and national law. Although these words or phrases are generally explained within the text, they are also given here to provide a useful reference.

A-Zone - Found on both Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs), A-Zones are areas which would be flooded by a base flood. These areas may be numbered as AO, AH, or Al to A30, or they may be unnumbered. Numbered A-Zones indicate a particular area's risk of flooding.

Alteration - Any change or addition to a structure that increases its external dimensions.

Appeal - A request for a review of the floodplain administrator's interpretation of any provision of these regulations or a request for a variance.

Area of Special Flood Hazard - The land in the floodplain within the community subject to a one percent (1%) or greater chance of inundation in any given year, i.e. the 100-year floodplain.

Artificial Obstruction/Development - Any obstruction which is not natural, including any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any 100-year floodplain which may impede, retard, or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

Base Flood - A flood having a one percent (1%) chance of being equalled or exceeded in any given year. Also referred to as the 100-year flood.

Base Flood Elevation - Referenced to "mean sea level," the elevation that the water reaches during a base flood.

Channelization Project - The excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of a stream from its established course.

Development - Refers to any man-made change to real estate including, but not limited to, buildings or other structures, filling, mining, dredging, grading, or excavation.

Establish - To construct, place, insert, or excavate.

Federal Emergency Management Agency (FEMA) - The federal agency that administers the National Flood Insurance Program.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation of runoff of surface waters from any source.

Floodplain - The areas adjoining a stream which would be covered by flood water.

Floodway - The channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a base flood

without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

Floodway Fringe - That portion of the floodplain outside the limits of the floodway.

Flood Boundary and Floodway Map - A map which may be included with the Flood Insurance Study and the Flood Insurance Rate Map. It identifies the floodway and, along with the study and the FIRM, provides the technical basis for floodplain management regulations.

Flood Hazard Boundary Map (FHBM) - Usually the first map a community receives from the Federal Emergency Management Agency. It designates areas of special flood hazard within a given community and forms the basis for both regulation and insurance for communities in the preliminary Emergency Phase of the National Flood Insurance Program (NFIP).

Flood Insurance Rate Map (FIRM) - The map on which the Federal Insurance Administration has delineated both the 100-year floodplains and the risk premium zones. This map forms the basis for both regulation and insurance for communities in the Regular Phase of the National Flood Insurance Program.

Flood Insurance Study - The report in which the Federal Emergency Management Agency provides flood profiles, as well as the Flood

Boundary/Floodway Maps, water surface elevations, and the Flood Insurance Rate Map. After this study is completed, communities are required to participate in the Regular Phase of the National Flood Insurance Program.

Hydraulics - The science dealing with transmission of water in motion.

Hydrology - The science dealing with the distribution and circulation of water on the surface of the land.

Lowest Floor Elevation - Any floor area that is usable, or potentially usable, for living purposes, storage, or recreation.

Mobile Home - A structure that is transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

New Construction - Structures for which construction, substantial improvement, or alteration begins on or after the effective date of these regulations.

Non-Conforming Use - A land use not in accordance with these regulations.

Official Floodplain Maps - The Flood Insurance Rate Maps and Flood Boundary/Floodway Maps provided by the Federal Emergency Management Agency or Special Hydraulic Floodway Maps provided by the U.S. Corps of Engineers, or Special Flood Hazard Study Maps provided by the Soil Conservation Service.

Permit Issuing Authority - A local floodplain administrator appointed by the city or town council, or the city or county commission.

Riprap - Stone, rocks, concrete blocks, or analogous material placed along the banks or bed of a stream for the purpose of alleviating erosion.

Start of Construction - The first placement of permanent structure (other than a mobile home) on a site, such as pouring slabs or footings, or any work beyond excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; installation of streets and/or walkways; excavation for a basement, footings, piers, foundation, or temporary forms; installation of accessory buildings, such as garages or sheds not occupied as dwellings or as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, start of

construction is the date of completion of facilities for servicing the site, including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and the installation of utilities.

Structure - A walled and roofed building, a mobile home, or a gas or liquid storage tank, that is principally above ground.

Substantial Improvement - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of its market value before the improvement or, when a damaged structure is being restored, fifty percent (50%) of its value before the damage. "Substantial improvement" is considered to occur when the first construction to any wall, ceiling, floor, or other structural part of a building commences. A substantial improvement differs from an alteration of a structure in that it does not affect the structure's external dimensions. The term also excludes any project to make a structure comply with existing state or local health, sanitary, or safety codes, and which is necessary solely to assure safe living conditions, or any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.

Suitable Fill - Fill material which is stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or

other organic material, and fit to support the intended use or permanent structure.

Variance - A release from the Floodplain Management Regulations which permits construction otherwise prohibited by them.

CHAPTER I: NATIONAL FLOOD INSURANCE PROGRAM

GOALS AND OBJECTIVES

The main goal of the National Flood Insurance Program (NFIP), created by Congress in 1968, is to reduce annual flood losses.

The Program has two major objectives: 1) to provide property owners in flood-prone areas with affordable, federally subsidized flood insurance; and 2) to discourage future development in floodplains which would be subject to greatest flood damage.

These two functions are interdependent, since the NFIP requires local governments to regulate floodplain development before flood insurance can be obtained in their communities. The local regulations must meet the minimum requirements established by the federal government.

PROGRAM DESCRIPTION

The National Flood Insurance Program provides flood insurance to towns, cities, and counties that adopt and enforce a floodplain ordinance that meets certain minimum requirements.

These minimum requirements will depend on the amount of data the Federal Emergency Management Agency gives the community. When local governments first decide to participate in the Program,

available data are usually limited. At this time, less stringent measures are required, but correspondingly, less complete coverage is offered. This is called the Emergency Phase of the Program.

After detailed flood insurance studies have been completed, the community must enact more stringent regulations. At this time, the full limits of flood insurance coverage become available, and the community becomes part of the Regular Phase of the Program. These two phases of the NFIP, the Emergency and the Regular Phases, are described in more detail below.

EMERGENCY PHASE

When the National Flood Insurance Program first became law, the Federal Emergency Management Agency notified communities that could benefit from the Program. These communities were sent Flood Hazard Boundary Maps (FHBM), which identified local areas prone to flooding, and were given information about the Program. After passing ordinances to reduce flood risks, these communities then were accepted into the Emergency Phase of the Program.

This is the classic sequence for entry into the Program. However, some communities do enter without first receiving an FHBM, and this is becoming more common now that the federal government's intensive search for flood-prone areas is over.

Such communities often have local flood hazards that have been overlooked by the federal government. In these cases, the local government contacts the NFIP and requests enrollment. After passing the appropriate ordinances, the community is then accepted into the Program.

Flood Hazard Boundary Maps are produced for the Federal Emergency Management Agency by an engineering consulting firm. Flood hazard areas on the maps are marked as A-zones. (A brochure on how to read an FHBM is in the pocket inside the back cover.)

These A-zones are determined by studying aerial photographs of past floods or U.S. Geological Survey topographic maps. The local floodplain administrator may interpret the floodplain boundaries using information acquired in the field when there appears to be a discrepancy between actual field conditions and the mapping.

Specific actions which must be enforced in these A-zones include requirements for: 1) proper anchoring of structures; 2) the use of construction methods and materials that minimize flood damage; 3) adequate drainage for new subdivisions; and 4) the location and design of new or replacement utility systems to prevent flood loss.

In addition, participation in the Emergency Phase also requires that a community initiate a permit system for all new

construction or development and use it to assure that these sites will be reasonably free from flooding.

REGULAR PHASE

A community is required to move from the Emergency Phase to the Regular phase of the NFIP when the Federal Emergency Management Agency completes a detailed Flood Insurance Study, which defines the community's flood hazards based on hydrologic analyses. This study defines the limit of the floodplain and divides it into zones reflecting the risk of flooding. The zones, along with base flood elevations, are shown on a Flood Insurance Rate Map (FIRM). The Regular Phase of the NFIP allows residents to obtain increased amounts of flood insurance. (See the brochure on the FIRM in the pocket inside the back cover.)

The zones which can appear on a FIRM include a variety of A-zones, B-zones, and C-zones. A-1 through A-30 zones indicate risk for insurance rating purposes. AO or AH zones are areas of shallow flooding (one foot to three feet in depth) usually resulting from sheet flooding or ponding. B-Zones appearing on the FIRM are those areas subject to flooding between the limits of the 100-year and 500-year flood. They also can be areas where the average depth of the 100-year flood is less than one foot or the contributing drainage area is less than one square mile, or areas where levees provide protection from the base flood.

C-Zones are

areas subject to flooding beyond the 500-year event. B- and C-Zones are shown for information only; development there does not have to conform to NFIP standards.

The Federal Emergency Management Agency sometimes also provides a community with enough detailed information to designate a regulatory floodway. This information is displayed on a map called the Flood Boundary and Floodway Map. Data found on this map are referenced to the Flood Insurance Study.

Communities participating in the Regular Phase of the NFIP must adopt and enforce an ordinance which requires new residential structures in flood hazard areas to have the lowest floor (including the basement) elevated to the Base Flood Elevation (1). In cases where a floodway has been established, the ordinance must also limit development in it to those uses, such as agriculture or open space, which will result in no increase in flood heights. It is sometimes possible for a community to participate in the Regular Phase of NFIP without completion of a detailed Flood Insurance Study. Called a "Special Conversion," this usually occurs when there is minimal flood hazard in the community or when sufficient flood data exists from other sources. In these instances, FEMA requires communities to use the best available information to regulate floodplain development.

1 Montana law, as will be seen in the following chapter, requires these structures to be elevated at least two feet above the Base Flood Elevation.

BIENNIAL REPORTS

Communities participating in the National Flood Insurance Program must submit a Biennial Report to the Federal Emergency Management Agency (FEMA). Every two years, FEMA sends out a one-page form that must be completed and returned within 30 days. This form requests information concerning any changes to the community's flood hazard area and development activities that have taken place in the floodplain.

How to Fill Out the Biennial Report

The Biennial Report form varies slightly for Emergency and Regular Phase communities. When completing the form, be sure to note any address changes at the top of the page.

Questions in Section I ask about the changes and activities in the floodplain. If there have been changes in the community's territorial limits, be sure to mark "Yes" to Question A and include a map of the new limits. Regarding man-made changes, projects built in compliance with the NFIP should not be listed. Replacement of culverts, bridges, or other structures which previously contributed to serious flooding should be reported. Construction of public dams or dikes also should be reported. Individual, localized projects such as parking lots, small retention basins, or minor drainage improvements need not be mentioned.

Question D provides the opportunity to indicate whether or not the community needs help in its floodplain management program. Don't hesitate to check "Yes" if assistance is needed.

Section II asks how many permits have been granted in the community's flood hazard areas within the two years (1) covered by the report.

The last portion of the report asks for the best estimate of the population and the number of family structures and other structures (schools, churches, businesses, public buildings) located in the community. It also requests these estimates for the community's flood hazard areas only.

Finally, the report must be signed by the chief executive officer (the mayor or chairperson of the County Commission) and returned to FEMA at the address provided. One copy should be saved for the community's files so that it is available for future reference. Another copy must be sent to the Floodplain Management Section.

1 The Floodplain Management Section also needs this information and requests photocopies of all permits issued for the community's flood hazard areas. Regular program communities also are asked to report the number of variances granted.

CAPE

CAPE stands for Community Assistance and Program Evaluation.

FEMA conducts CAPEs in Emergency and Regular Phase communities to see how they are doing in their efforts to comply with the regulations of the National Flood Insurance Program. CAPEs are scheduled annually, usually during the month of initial entry into the program.

When a CAPE is held, a FEMA staff member or the State Assistance Program Coordinator, or both, visit the community, review their development permit system, and answer any questions local officials may have. They also visit local bankers and insurance agents to ask if they are having any problems with NFIP requirements.

The primary purpose of CAPEs is to help communities solve their floodplain management problems. If the CAPE indicates, however, that a community has been knowingly negligent in its responsibilities, FEMA may suspend the community from the NFIP for noncompliance. Penalties for noncompliance can place an undue hardship on a community and its residents.

CHAPTER II: MONTANA FLOODPLAIN & FLOODWAY MANAGEMENT ACT

The Montana Floodplain and Floodway Management Act was passed by the Montana Legislature in 1971 and amended and revised in 1973. In approving the Act, the Legislature recognized the need for a united effort between local and state governments to combat recurrent flood damages. It also provided for coordination between state and federal programs, since compliance with the Act makes local communities eligible for National Flood Insurance. A copy of the complete text of the Act is in Appendix A-2.

GENERAL PROVISIONS

The Floodplain and Floodway Management Act has four major parts. Part 1 establishes the need for management and regulation of flood-prone lands in order to reduce flooding threats to life and to health and to minimize private and public economic losses. It also summarizes the Act's general provisions. These include provisions for information gathering to identify lands which are unsuited for development because of flood hazards; for land-use regulations that will distinguish between floodways and floodplains; and for minimum standards that balance the greatest public good with the least private injury.

Part 2 of the Act deals with the role of state agencies in carrying out the purposes of the Act. The Department of Natural

Resources and Conservation is named as the agency responsible for delineating floodplains and floodways for watercourses and drainways in the state. The Board of Natural Resources and Conservation is charged with designating floodplains (after a public hearing) for which political subdivisions are to establish land-use regulations. Citizens are allowed to appeal to the Board concerning any of its orders. Further powers and duties of DNRC and the Board are given in the Act. (See Appendix A-2.)

Part 3 of the Act deals with the role of local government. Upon receiving floodplain information from the state, officials of a political subdivision are given six months to adopt land-use regulations which meet or exceed the minimum standards of the Board. If regulations are not adopted within six months, the Department itself may enforce the regulations. In some cases, in order to comply with the requirements of the National Flood Insurance Program, the Board may shorten the period for adoption of land-use regulations.

The fourth part of the Act identifies permissible and nonpermissible land uses for designated floodways and flood-fringe areas. It provides for a permit system to regulate development in the floodway and flood fringe. More detailed explanations can be found in the Act itself (see Appendix A-2).

FLOODPLAIN MANAGEMENT SECTION

The Montana Department of Natural Resources and Conservation (DNRC), through its Floodplain Management Section, is the state agency charged with implementing the Floodplain and Floodway Management Act. The Administrative Rules for this Act describe the Floodplain Management Section's duties and responsibilities in detail. Some of these are given in this section. (See Appendix A-3 for complete Rules.)

Since the state law was written to ensure that Montana communities with a high risk of being flooded could have full coverage under the National Flood Insurance Program, part of the responsibility of the Floodplain Management Section is to identify those communities and assure that they comply with the state law and NFIP requirements. Most Montana communities that may be subject to flooding have already been identified by the federal government and have entered the Emergency Phase of the NFIP, so the Floodplain Management Section concentrates on finding those communities with the greatest risk of damages from flooding. Such communities are in need of detailed floodplain and floodway studies so that they can effectively manage their flood-prone areas and so that they can enter the Regular Phase of the NFIP and receive full insurance coverage. Studies required for NFIP participation are contracted by the Federal Emergency Management Agency.

The identification process is conducted in conjunction with both federal and local agencies. Initially, Flood Hazard Boundary Maps and records of past floods are used to identify Emergency Phase communities that may be subject to greatest flood losses. The Floodplain Management Section then meets with local officials to ask for further information, which it passes on to FEMA for use in its studies. It informs the community on the progress of these studies and encourages local citizens to contribute to them. When the Federal Emergency Management Agency completes its Flood Insurance Study and Flood Insurance Rate Map, the communities become eligible for entry into the Regular Phase of the NFIP.

The initial information gathered by the Floodplain Management Section and the finalized Flood Insurance Study and FIRM are used by the Board of Natural Resources and Conservation as the basis for designating a floodplain or floodway in a given area. This is usually done when the area in question is a county or unincorporated town without legal authority to pass floodplain measures. In such cases, the Board's designation provides the necessary legal authority for action.

Once necessary legislation is passed, communities are accepted into the Regular Phase of the NFIP and receive the full range of insurance coverage. The Floodplain Management Section is responsible for assisting in this conversion process. It does so through the State Assistance Program, which is that part of the Floodplain Management Section that serves as liaison between

the NFIP and state and local governments. Specifically, the Section's functions are to provide information on the NFIP, to coordinate federal, state, and local flood hazard mitigation efforts, to develop adequate communication with local governments so that state and federal program goals can be achieved, to provide technical assistance to local officials, and to assist or substitute for federal officials when a CAPE is conducted.

Bringing communities into the Regular Phase of the NFIP is one phase of the Floodplain Management Section's work. The other is helping such communities in carrying out or expanding their management activities. It offers assistance by phone, letter, or personal visit and encourages local administrators to seek help when assistance is needed. Following are some of the services the Floodplain Management Section can provide:

- technical assistance in delineating floodplains and floodways;
- advice or recommendation in the preparation and adoption of a floodplain management ordinance or regulations;
- guidance in developing a permit system to administer the ordinance;
- technical assistance in reviewing or interpreting the hydraulic flood hazard data supplied to the community by

FEMA, the Soil Conservation Service, or the U.S. Army Corps of Engineers;

-in some cases, a review of a permit application for a local administrator to determine a proposed project's impact on the base flood elevation; and

-advice or assistance in developing other floodplain management projects, such as flood-warning or flood-fighting plans, structural works to alleviate flood problems, or acquisition or relocation programs.

If the Floodplain Management Section cannot provide assistance with these activities, it can suggest other sources of help.

FLOODPLAIN MANAGEMENT STANDARDS

As stated earlier, state law requires that floodplain regulations be consistent with NFIP standards. Specific regulations are given in detail in the next chapter. A few, however, are presented here to emphasize their importance.

1. No use shall be permitted in the floodway that results in any increase in the base flood elevation.

2. Specifically prohibited in the floodway are buildings for human habitation or assembly, and objects or structures subject to floating or movement during flooding periods.

3. Residential structures in the flood fringe must have their lowest floors, including basements, elevated two feet or more above the base flood elevation.

4. Nonresidential structures in the flood fringe must have the in lowest floors, including basements, elevated or floodproofed to two feet or more above the base flood elevation.

COMMUNITY RESPONSIBILITIES

The Montana Floodplain Management Administrative Rules direct communities with designated floodplains or floodways to adopt land-use regulations that comply with the state law and make them eligible for participation in the National Flood Insurance Program. The Rules also direct communities to submit these regulations to the Floodplain Management Section, which reviews them to assure compliance with the intent, purposes, and provisions of the state Act and the Administrative Rules.

There are two ways a community can meet the requirements for land-use regulation. One method is to adopt appropriate changes in existing zoning, subdivision, and building ordinances. The other method is to adopt a specific floodplain ordinance. Whichever option is selected, it should be the one which best fits a community's needs and capabilities.

ENFORCEMENT

Developments which violate the Montana Floodplain and Floodway Management Act or Administrative Rules or a local ordinance adopted in accordance with the Act are considered a public nuisance. The Act gives the affected community or the Department of Natural Resources and Conservation the authority to remove the nuisance at the expense of the owner. Persons violating the provisions of the Act are guilty of a misdemeanor. If convicted they can be fined up to \$100 or be imprisoned in jail for up to 10 days, or both. Each day's continuance of a violation is considered a separate and distinct offense.

In prosecuting persons in violation of the Act, the local community's legal staff is encouraged to initiate any legal action. DNRC will provide supportive legal assistance. It is recommended that on discovery of a violation, an injunctive relief be filed in court to stop construction as soon as possible to decrease hardships. DNRC has on file records of past cases in order to assist the community's legal staff.

Communities that fail to adopt and enforce a floodplain management ordinance required by the NFIP jeopardize their eligibility to receive any disaster assistance, financial or otherwise, from the federal government in the event of a flood disaster.

CHAPTER III: FLOODPLAIN ORDINANCE

In order to comply with the Montana Floodplain and Floodway Management Act and to fulfill the requirements of the National Flood Insurance Program, communities must regulate development in floodplains. This chapter describes a model ordinance which sets construction standards and lists those standards. The model was written by the Floodplain Management Section to serve as a guide and complies with both state and NFIP requirements. (Complete text is in Appendix B.)

This model is offered to help communities adopt the necessary floodplain regulations. They may use it as is; they may wish to make it more stringent; or they may simply use the standards given to amended current ordinances.

MODEL ORDINANCE

The model ordinance is divided into seven chapters.

Chapter I is an introductory chapter which states the general purpose of the ordinance: to minimize flood damage by regulating development. The chapter cites the ordinance's statutory authority to regulate development and gives a brief summary of ordinance provisions.

Key words used in the floodplain ordinance are defined in Chapter II.

Chapter III gives the ordinance's geographical jurisdiction. It states that the regulatory standards of the floodplain ordinance apply only to those areas identified as special flood hazard areas on the official flood map issued by the Federal Emergency Management Agency. This map must be adopted as part of the ordinance.

Chapter IV establishes the administrative procedures that communities must use in regulating floodplain development. Following these procedures will ensure that the requirements of the NFIP and state law are met. These requirements include the development of a permit system, designation of a local administrator, and development of a variance procedure.

Chapters V and VI of the Model Ordinance define the general and specific standards that must be met when regulating development in the floodplain. The general standards are for all communities participating in the NFIP, whereas the specific standards need to be added only for communities that have base flood elevation data.

Chapter VII describes the floodproofing requirements that must be met.

STATE AND NFIP CONSTRUCTION STANDARDS

In order to effectively reduce potential flood damages, both federal and state governments have established standards for new or substantially improved construction projects and other developments in identified flood hazard areas. These standards are described in two sections. NFIP Emergency Phase requirements are presented first. NFIP Regular Phase and state requirements are combined in the second section. The model ordinance contains both state and federal requirements for the Regular Phase.

EMERGENCY PHASE--NFIP STANDARDS

New or substantially improved construction or development in flood hazard areas must meet the following standards:

Anchoring

In the Emergency Phase, regulations require that all structures be properly anchored to prevent them from moving off their foundations during a flood. In Montana, anchoring requirements are generally met for most permanent structures through common construction practices. There are more specific requirements for anchoring mobile homes. Regulations state that mobile homes in special flood hazard areas will have the following:

- Over-the-top ties at each of the corners, and two additional ties per side at intermediate locations if the home is longer than 50 feet; only one additional tie per side if it is shorter;
- Frame ties at each of the corners with five additional ties per side on mobile homes longer than 50 feet; four additional per side are required if a mobile home is less than 50 feet in length;
- Each component of the anchoring system must be capable of carrying a force of 4,800 pounds. This is equivalent to withstanding a wind force of 90 mph;
- Any additions to the mobile home must also be anchored.

The mobile home anchoring requirements are illustrated in Figure 1.

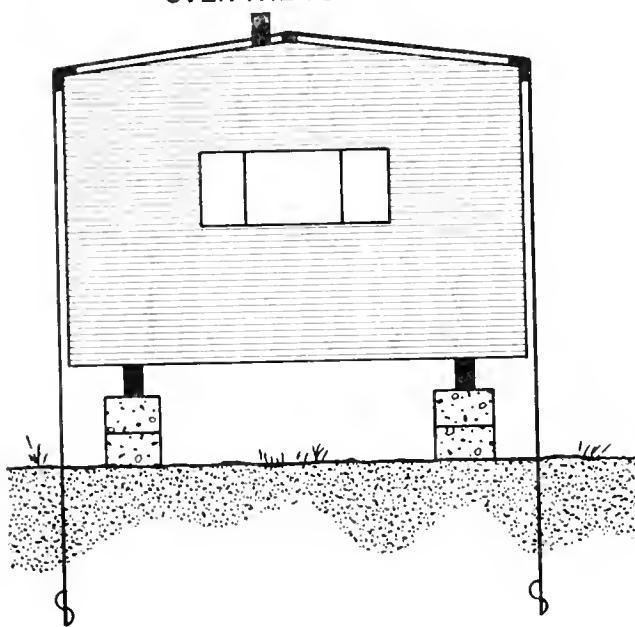
Construction Materials and Methods

Buildings can suffer damage in many ways during a flood: hydrostatic pressure can push walls or windows in; hydrodynamic pressure resulting from waves or debris can batter walls down; uplift can cause structures to float; and contact with water can warp or decompose walls or floors.

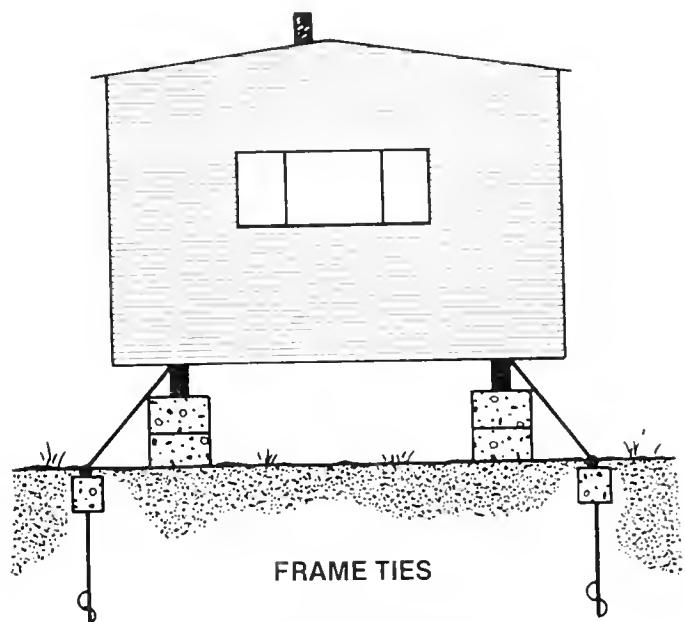
MOBILE HOME ANCHORING REQUIREMENTS

FIGURE 1

OVER-THE-TOP TIES

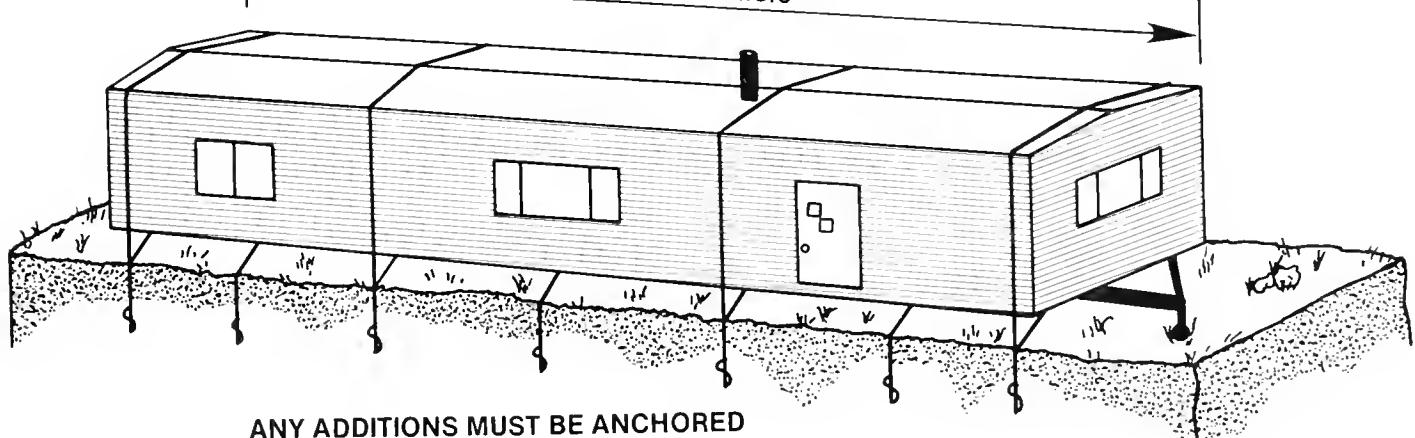


FRAME TIES



Each tie must be capable of withstanding a force of 4800 pounds.

50 Feet or More



ANY ADDITIONS MUST BE ANCHORED

Access for a hauler must be provided.

Because of this, the NFIP requires that new buildings in flood hazard areas be constructed with materials and methods that resist or minimize flood damage. The best method suggested is to elevate the lowest floor of a structure above the highest historical flood elevation. Where flood elevation data are not readily available, however, other methods will help minimize damage. For example:

- all floorings (wood or carpeting) could be made of materials resistant to water damage;
- subfloors could be made of an "exterior" or "marine" grade which is water resistant or waterproof;
- structures can be placed in a way to offer the least obstruction to flood flows, such as with the longer side parallel to the stream.

In addition to these ideas, common sense can suggest other construction practices that could reduce flood damage.

Utilities

NFIP regulations require that new and replacement water supply systems, sanitary sewer systems, and on-site waste disposal systems be designed to minimize or eliminate infiltration of flood waters into the systems.

To meet requirements, local officials must be confident that their systems are designed to prevent infiltration. For example, manhole covers should be located or designed to minimize flood damage. Waste treatment facilities, including pumping stations, lagoons, and treatment plants must be floodproofed. Ring levees may have to be used to protect waste treatment facilities.

On-site waste disposal and treatment systems such as septic tanks must also be designed to minimize flood damage. This requirement may be difficult to meet since on-site facilities may be located well below the first flood level of the structure they serve. Generally, any inlets to the septic tank or outlets from it should be equipped with check valves to prevent flood waters from returning through the pipes. Even though utilities are permitted by the NFIP and the state Floodplain Management Section under these conditions, the Montana Department of Health and Environmental Sciences has regulations which may be more stringent and must also be met.

Subdivisions

The NFIP requires that new subdivisions be regulated to reduce flood damage. Specifically, the regulations address the need to protect utilities and ensure adequate drainage. For example, electrical, gas, water, and sewer facilities should be protected from flood damage. Gas, water, and sewer systems should be designed to withstand leakage or rupture during flooding. To provide adequate drainage, building sites should be located at

least two feet above the street elevation, and streets should be designed to drain properly and prevent ponding.

For large subdivisions (50 lots or five acres or more) it is the responsibility of the developer to determine the base flood elevation and the boundary of the floodplain on his subdivision proposal. A grading plan showing the proposed finished elevation of streets and building sites should be included in the proposal. Areas on the grading plan that are located below the base flood elevation may be used for streets, recreation, and other uses which will not increase flooding. All structures must be located above the base flood elevation.

Subdivision proposals must undergo review by the Subdivision Bureau of the Department of Health and Environmental Sciences. Their regulations do not allow soil absorption systems within an identified floodplain.

Encroachments

All development permits must be reviewed to see if the proposed action will significantly obstruct flood waters, thereby increasing flood stages. For communities without base flood elevation data, additional justification for projects that will increase flood heights is needed, and the proposer should detail how the adverse impacts from his project will be minimized.

REGULAR PHASE--NFIP AND STATE STANDARDS

In addition to the general standards required by the NFIP in the Emergency Phase of its Program, certain specific standards must be met in Regular Phase communities where the base flood elevation (BFE) has been established. Furthermore, to comply with the state law, some additional requirements must be met. Adopting the following standards will fulfill the requirements of both laws.

Residential Structures

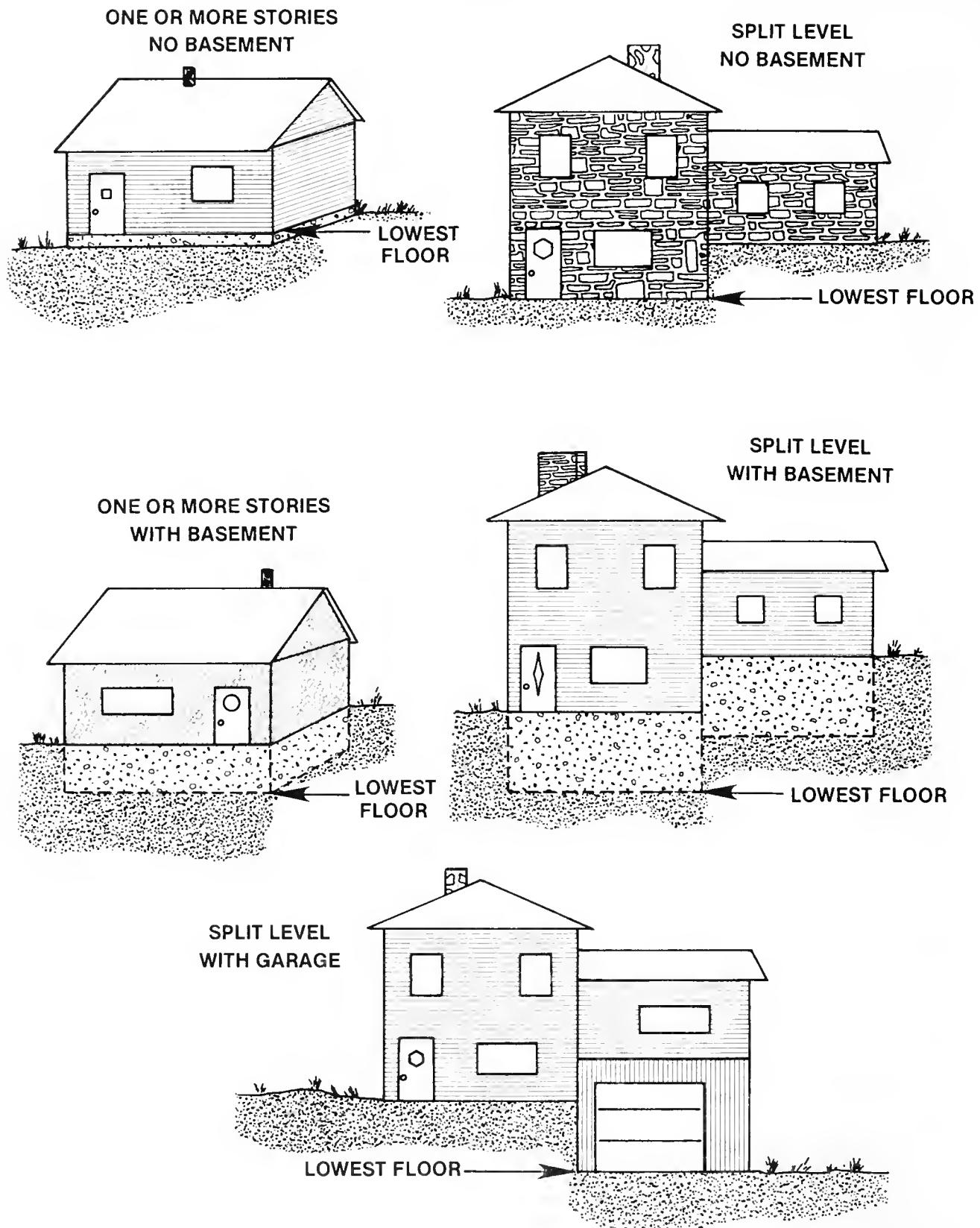
For new or substantially improved homes, apartments, and other residential structures, the lowest floor, including the basement, must be elevated two feet or more above the BFE. The lowest floor of structures is illustrated in Figure 2. In Montana the method of elevating structures is to build them on fill. For example, fill is used to raise the structure to at least the level of the BFE with the foundation being two feet or more.

Nonresidential Structures

For all nonresidential structures such as office buildings or stores, the lowest floor, including the basement, must either be elevated or floodproofed two feet or more above the BFE.

DETERMINING LOWEST FLOOR

FIGURE 2



The floodproofing method used must ensure the structure is water tight and can resist water pressure in flooding situations. The community must have the assurances of a registered professional engineer or architect that the floodproofing method is, indeed, effective.

Mobile Homes

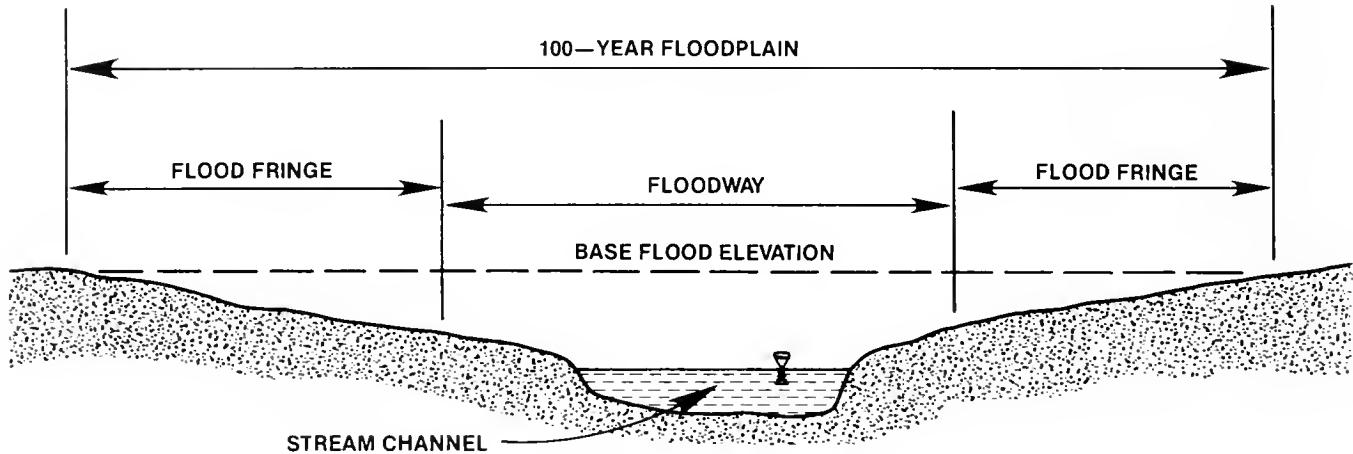
In new mobile home parks or subdivisions, the mobile home must be elevated on fill so that the lowest floor is two feet or more above the BFE. Access for a hauler must be provided.

Floodways

Communities which have a designated floodway (on a Flood Boundary-Floodway Map) have additional floodplain management responsibilities. The floodway is the area within which most developments would increase the base flood elevation beyond the one-half foot permitted by the regulations. (See Figures 3-A and 3-B.) Consequently, Montana state law prohibits encroachments, including fill, new construction, or other developments in the floodway, unless it can be shown that the development would result in no increase in flood heights. Mobile homes are explicitly prohibited in a floodway unless a mobile home park existed prior to the delineation of the floodway. Mobile home parks or subdivisions that were existing, however, cannot be expanded to include more homes.

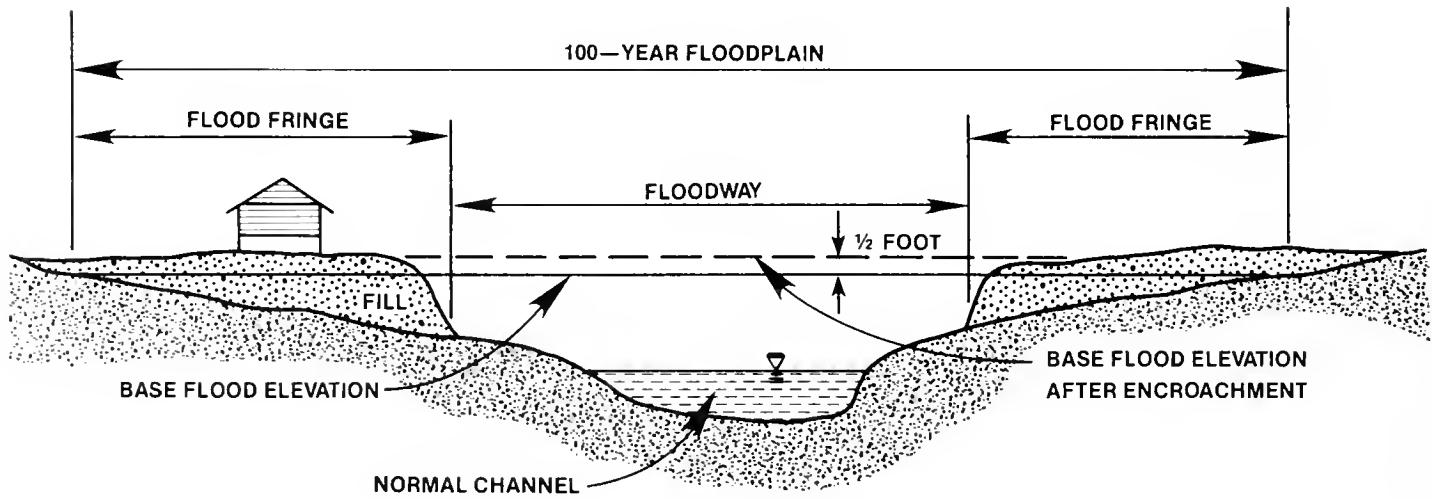
CROSS SECTION VIEW OF FLOODPLAIN

FIGURE 3—A



CROSS SECTION VIEW OF FLOODPLAIN WITH ENCROACHMENT

FIGURE 3—B



CHAPTER IV: ADMINISTRATIVE PROCEDURES

This chapter describes a permit system that communities can implement to regulate development. Some communities may want to vary this system by rewriting certain requirements into existing permit systems. However, if this is done, care must be taken that all requirements are still met. Also discussed in this chapter are variances, enforcement, record keeping, and the local administrator.

REGULATING DEVELOPMENT THROUGH PERMITS

Communities must assure that no construction or development takes place in an identified flood hazard area without a permit. Issuing of permits enables the community to be sure that the proposed development meets the standards of state laws and the NFIP.

It is important to note that the concept of "development" goes beyond the scope of the traditional building permit. Whereas the building permit is concerned only with buildings, the floodplain development permit also includes alterations to landscape such as excavation or the use of fill which would affect drainage patterns or the flood carrying capacity of the watercourse.

WHEN A PERMIT IS REQUIRED

A permit is required when building or enlarging a structure, placing a mobile home, or mining, dredging, filling, grading, paving, excavating, or drilling within flood hazard areas. In other words, any structural or nonstructural activity that may affect flooding or flood damage must have a permit.

Specifically, all structural (buildings, mobile homes, storage facilities, dams, dikes, etc.) projects need a permit. Storage of flammable, toxic, or explosive materials shall not be permitted.

THE PERMIT APPLICATION

Anyone wishing to develop in the floodplain must obtain a permit application form from the local administrator and submit it for approval before beginning any development activities. A sample development permit application is in Appendix D-1. Communities may, however, adapt their existing permit systems to meet state and NFIP requirements. Regardless of the form used, the following information, if applicable, must be supplied on a permit application for floodplain development:

- A complete description of the proposed activity. Enough information must be included so that the local administrator can tell whether the proposed activity will be safe from

flooding and whether it will increase flood hazards elsewhere. At a minimum, there should be plans drawn to scale showing:

- the nature, location, dimension, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; any other landscape alterations.
- the mean sea level (MSL) elevation of the lowest floor, including the basement; of all proposed structures;
- the MSL elevation to which any proposed nonresidential structures will be floodproofed;
- certification by a registered professional engineer or architect that the chosen floodproofing method meets NFIP floodproofing criteria;
- base flood elevation data for subdivisions of 50 lots or 5 acres or more. When not given on the FIRM, this data must be provided by the developer;
- a description of the extent to which any watercourse (stream, river, drainage ditch) will be altered or relocated.

On the permit application form in Appendix D-1, there is a section to be completed by the local administrator. In this section the administrator lists the data base he or she uses when

reviewing the permit application. He or she also specifies whether the proposed development is in the floodway or flood fringe, and gives the base flood elevation for the proposed site. Having this listed on the application will be useful later, should the applicant question the technical basis for review of the permit.

On the reverse side of the application form, there is a section called "Elevation Certification." This section should be completed after the developer has provided the local administrator with a certification from a registered professional engineer or land surveyor that the permitted structure was actually built at least to the elevation required by the permit.

REVIEWING THE PERMIT APPLICATION

Reviewing a permit application is the most important responsibility of the local administrator. Local administrators may use a checklist to help them determine if proposed projects meet the criteria of their floodplain ordinances. Several factors must be taken into consideration when reviewing any permit application. For some projects, depending on their type or location, special considerations must be included in the review procedure. The items a local administrator must consider for all cases are listed on the following pages. Special considerations are given in the following section.

Locating the Development

The first thing the local administrator must determine is whether the proposed development is in the special flood hazard area. If this is not obvious, the administrator should determine the distance in the field between the proposed development site and one or more identifiable points (centerline of a street, a bridge, the river channel, etc.). Then using the map scale, he should convert the distance from the identifiable point on the map to the site. In this way, he or she can decide if the proposed development is in the special flood hazard area.

Determining if the Application is Complete

The local administrator should make sure the application is complete. The application should contain a thorough description of the proposed development, including the elevation of any structures, certification of any floodproofing methods, and base flood elevation data for subdivisions of 5 acres or 50 lots or more.

If the administrator cannot determine, based on given data, whether the development will be safe from flooding, he or she should ask the applicant for more information.

Determining the Base Flood Elevation (BFE)

In order to review a permit application, the local administrator must know the flood hazard (or base flood elevation) at the

development site. If the local administrator has a Flood Insurance Rate Map and Flood Insurance Study, BFE data for the development site is readily available. Reports from other federal or state agencies may also help. These would include flood hazard analyses from the Soil Conservation Service or the U.S. Army Corps of Engineers, or studies by the Department of Natural Resources and Conservation or the U.S. Geological Service. If no data are available, the local administrator must use judgement and be guided by the FHBM, past flood accounts described in newspaper and photos, or by high water marks on buildings, telephone poles, bridges or other structures.

Once the local administrator has the flood hazard data, reviewing the description of the proposed project in relation to the flood hazard will determine whether it will be safe from flooding. For example, if the available information shows a BFE of 4,930 feet MSL and the permit application indicates the proposed structure will have its lowest floor built to an elevation of 4,927 feet MSL, then it will be subject to 3 feet of water during the base flood. The local administrator must not grant a permit for this structure unless the applicant agrees to elevate it 2 feet or more above the base flood elevation. Or, suppose a proposed project with a basement is in a special flood hazard area on the Flood Hazard Boundary Map, and the local administrator knows from newspaper accounts that that area of town suffers from street and basement flooding during rainstorms. In such a case, the administrator may issue a permit only if the structure is built without a basement.

Other Considerations

The local administrator must make sure the proposed activity meets the standards of the Floodplain and Floodway Management Act listed in the previous chapter. In reviewing an application, the key is that the proposed activity itself must be safe from flooding and that it must not increase the flood hazard to other areas.

Additional Permits

The local administrator should be able to tell the applicant when an additional permit might be required. Following are some additional regulations which might apply to projects he or she evaluates.

Montana Water Quality Act. This state law and regulations adopted pursuant to it provide for classification of surface waters. They also establish surface water quality standards and a permit program to control the discharge of pollutants into state waters. State law requires that an application be submitted at least 180 days prior to commencing any work which would result in a discharge. The permit must be obtained before any discharge can occur. It contains water quality limitations and requires self-monitoring of effluent quality by the permittee. The Department of Health and Environmental Sciences (DHES) administers this law.

Natural Streambed & Land Preservation Act. This state law requires what is commonly known as the 310 permit. It requires any persons or private organizations to gain the approval of the Board of Supervisors of the local Conservation District or, where no Conservation District exists, approval of the Board of County Commissioners before beginning any development on private or public lands within the high water marks of a perennially flowing stream. It also requires a "Notice of Proposed Project," detailed plans, and review by the Department of Fish, Wildlife and Parks.

Stream Protection. This law, which requires a 124 permit, is similar to the Natural Streambed & Land Preservation Act, but instead of private persons or groups, it applies to state, county, or municipal government. Federal agencies, while not under State jurisdiction, are asked to comply. The law states that such government agencies must notify the Fish, Wildlife, and Parks Department when any construction project will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries. Projects by established irrigation districts are exempt.

Federal Water Pollution Control Act (Clean Water Act). Section 404 of this act requires that a Department of the Army permit, issued by the Corps of Engineers, be obtained for the discharge of dredged or fill material into waters of the United States or

on adjacent wetlands. Some minor activities are allowed by nationwide or general permits. Contact with the appropriate District Office should be made prior to performing any work of this nature.

River and Harbor Act. Section 10 of the River and Harbor Act of 1899 requires a Department of the Army permit, issued by the Corps of Engineers, for any work in navigable waters of the United States. The Kootenai River is considered a navigable water of the United States from Jennings upstream to the Canadian border. The Seattle District can give permit requirements on this waterway.

The Missouri River from Three Forks to the North Dakota state line and the Yellowstone River downstream from Emigrant also are navigable waters. The Omaha District of the Corps of Engineers should be contacted for permit requirements on these rivers.

Lakeshore Protection. This permit program, administered by county commissioners, is similar to that for protection of floodplains. County Planning Offices have information and permit applications.

E.O. 11988 Floodplain Management & E.O. 11990 Protection of Wetlands. These executive orders apply to federal agencies and provide guidance for actions dealing with the nation's floodplains and wetlands, whether federally or privately owned.

They state the federal government's responsibility to influence activities so as to avoid development of these lands wherever there is a practical alternative. The federal agency managing these lands can give advice on requirements. Local agency offices should be contacted. Additional permits may be required for various mining activities.

Water Rights. Before any person can divert or impound water for a new use, or change an established use of water in any way, he or she must receive a permit from the Department of Natural Resources and Conservation. This includes water removed from a stream for dredge mining. Most holders of existing water rights must have refiled those rights in compliance with the current Adjudication Statute (Senate Bill 76) before May 1, 1982. For both new and established rights, situations vary; local Water Rights Bureau field offices can provide details.

SPECIAL CONSIDERATIONS ON PERMIT REVIEWS

Floodways

If a community has a regulatory floodway and the local administrator determines that the proposed development is located within it, then a permit may not be issued unless the applicant can demonstrate that his development will not increase flood heights at all. Usually such developments are limited to open-space uses for recreation or agriculture.

Structures existing in a floodway prior to floodway identification are "grandfathered" in and are not subject to NFIP requirements. Any substantial improvements (50 percent of the market value or more) to such structures, however, must be in compliance with the floodplain ordinance. However, it is permissible for a mobile home to replace one that has moved out of a preexisting mobile home park. The new mobile home would, however, have to meet the anchoring (tie-down) requirements.

Allowable Floodway Uses. The only developments which may be permitted in a floodway are those that will not cause any increase in the BFE. (See Figure 4.) Typically, these include:

-agricultural uses not involving structures;

-uses incidental to industrial or commercial structures, such as loading areas, parking areas, and airport landing strips;

-private and public recreational uses, such as golf courses, driving ranges, picnic grounds, boat launching ramps, swimming areas, wildlife and nature preserves, fish hatcheries, target ranges, hunting and fishing areas, hiking and horseback-riding trails;

uses incidental to residential structures, such as lawns, gardens, parking areas, and play areas.

ALLOWABLE FLOODWAY USES

FIGURE 4

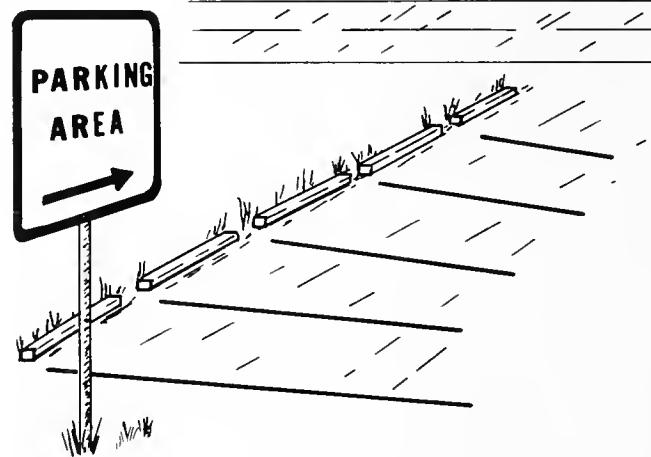


THE ONLY DEVELOPMENTS WHICH MAY BE PERMITTED IN THE FLOODWAY ARE THOSE WHICH WILL NOT CAUSE ANY INCREASE IN THE BFE. TYPICALLY, THESE INCLUDE:

1. Agricultural uses.



2. Uses incidental to industrial or commercial structures, such as loading areas, parking areas, & airport landing strips.



3. Private & public recreational uses, such as golf courses, driving ranges, picnic grounds, boat launching ramps, swimming areas, wildlife & nature preserves, fish hatcheries, target ranges, hunting & fishing areas & hiking & horseback riding trails.

4. Uses incidental to residential structures, such as lawns, gardens, parking areas, & play areas.

Watercourse Alterations

Whenever a local administrator reviews a development permit that includes a watercourse alteration (for example, realignment or diversion of a stream, ditch, or river), he or she must be satisfied that the flow-carrying capacity of the watercourse will not be diminished. In order to do this, the permit applicant must supply a thorough description (a set of plans and calculations) of the proposed alteration and its effect on flows. If the administrator does not have the technical background to review such descriptions, he or she must rely on the community's engineering staff, the state Floodplain Management Section, or seek outside professional assistance. Basic items the administrator should look for include:

- A determination that the hydraulic capacity of the watercourse will be the same or greater after the alteration. For example, if a new road is crossing a stream or coulee, culverts under the road must not place an undue constriction on the channel, causing flood waters to back up;
- Maintenance of channel stability. Several factors relating to channel stability can influence or change a watercourse. For example, the alignment and grade of a channel or the material on the channel banks and bottom can affect the flow velocity, which in turn may cause erosion.

Generally, an applicant should provide the administrator with a topographic map of the area in question, a comparison of the existing and proposed channel capacities, a description of the proposed alteration, land use of adjacent properties, description of any obstructions, and photos of the area.

NFIP regulations require the local administrator to notify adjacent communities and the Montana Floodplain Management Section of any proposed watercourse alterations. It would also be advisable to notify the local conservation district and the state Department of Fish, Wildlife and Parks of proposed alterations.

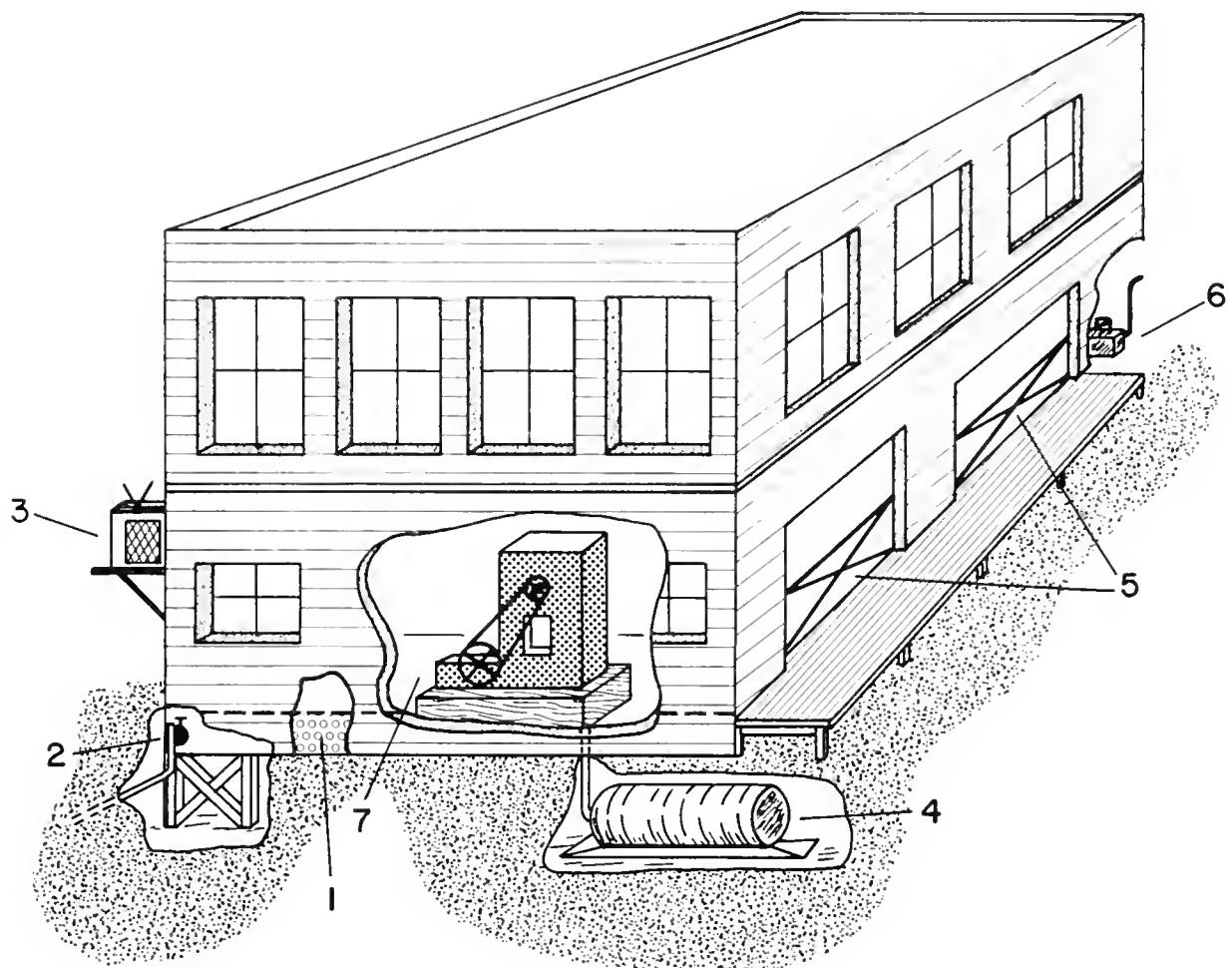
Nonresidential Structures

NFIP regulations allow for nonresidential buildings (commercial structures, garages, warehouse, etc.) to be floodproofed rather than elevated to provide protection from the base flood. (See Figure 5.) Floodproofing consists of designing a structure in such a way that all parts of the structure located below the base flood elevation are watertight and resistant to flood damage.

Any time a nonresidential structure is floodproofed, a registered professional engineer or architect must certify that the floodproofing measures meet the design standards. This certification, referred to as a Preconstruction Floodproofing

FLOODPROOFING OF COMMERCIAL OR INDUSTRIAL
STRUCTURE TO TWO FEET ABOVE BFE

FIGURE 5



1. Impermeable membranes to two feet above BFE.
2. Valve on sewer line to prevent back flow.
3. Power Service equipment raised to two feet above BFE.
4. Underground storage tank properly anchored.
5. Steel bulkheads for doorways.
6. Sump pump and drain to eject seepage.
7. Internal floors and walls made of materials resistant to flood damage to two feet above BFE.
8. Automatic shut-off valves on furnaces and fuel supply lines.

Certification, must be submitted with the permit application. A sample form is in Appendix D-2.

In addition, once the structure is built, a Postconstruction Certification form (See Appendix D-3) must be completed by a registered professional engineer or architect certifying that the building is floodproofed to two feet above the BFE.

Residential Structures

The lowest floor of residential structures must be elevated two feet or more above the base flood elevation. It must also be placed on a pad of compacted fill that is at or above the base flood elevation. The pad must extend out 15 feet in all directions from the structure. (See Figure 6.)

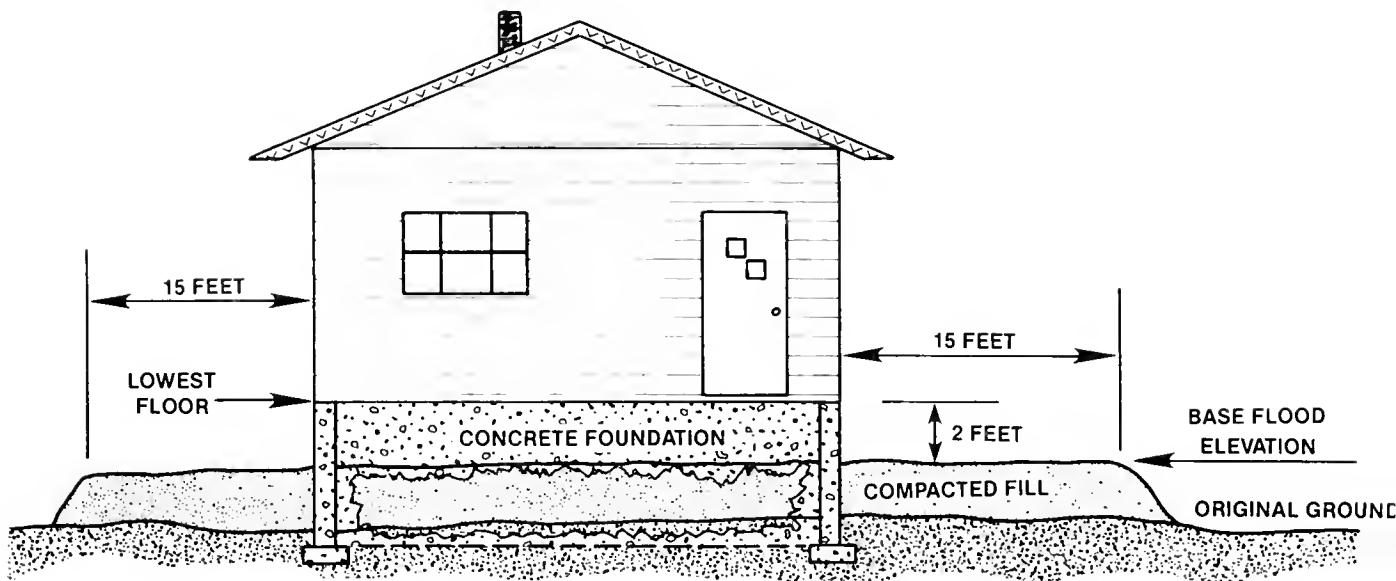
NFIP regulations require a community to obtain and maintain a record of the elevation of the lowest floor of all new or substantially improved structures in the flood hazard area. To comply with this regulation, communities must require the owner or developer of such structures to provide a "Postconstruction Elevation Certification" once the structure is completed.

Subdivisions

NFIP regulations require that developers supply base flood elevation data for their projects which exceed 50 lots or 5

FLOODWAY FRINGE: RESIDENTIAL STRUCTURES

FIGURE 6



Regulations for Residential Structures

- 1). The new residential construction, alteration and substantial improvement must be constructed on suitable fill so that the lowest floor elevation (including basement) is two feet or more above the BFE. The fill elevation is to be no lower than the BFE and shall extend for at least 15 feet beyond the structure in all directions.
- 2). Suitable fill is material which is stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash and organic material; and is fitted for the purpose of supporting the permanent structure.
- 3). It must be anchored to prevent flotation or collapse. Mobile homes must use over-the-top and frame ties at each corner and additional ties per side at intermediate points. Any additions must be similarly anchored. Normal use of anchor bolts for residential structures is adequate.
- 4). Adequate surface drainage must be provided.

acres. The intent of this requirement is to obtain base flood elevation data which can be used by the community for requiring floodproofing of new construction. Thus, any elevation data used to satisfy this requirement will in turn be the basis of elevation and floodproofing standards for structural development which takes place in the subdivision.

Accordingly, the elevation data provided by the applicant for subdivision plat approval should be consistent with the scope and scale of his proposal. For instance, if an applicant proposed to subdivide 20 acres of rural land into four equal parcels and no immediate construction was planned, then only the most elementary elevation data would be necessary. However, if a developer's proposal was for 20 acres of land to be divided into 80 lots, then the developer should obtain data which approximate the accuracy of the Flood Insurance Study.

In determining how detailed an applicant's base flood elevation data should be, the local administrator should obtain the following information from the applicant:

- The size and complexity of the proposed subdivision;
- The percentage of the subdivision area which would be flood-prone;

- The use to which the flood-prone area would be put (i.e., structural development, open space, parking). Such information allows the local administrator to determine the extent of the flood hazard in the subdivision and, consequently, how detailed the applicant's base flood elevation data should be.

Mobile Homes

In reviewing a permit for the placement of a mobile home in a mobile home park located in a flood hazard area, the local administrator must determine if the mobile home is an addition to an existing park or if it replaces a home that has moved out. If the mobile home is a replacement, it does not have to meet the standards as far as elevation of the lowest floor is concerned. It does, however, have to meet the tie-down requirements. If the mobile home is an addition to the park (in other words, the park is being expanded to include more homes), then it must be placed in such a manner that the lowest floor is elevated two feet or more above the BFE and it must be tied down.

In reviewing permits for completely new mobile home parks or additions, or permits for mobile homes placed in a flood hazard area but not in a mobile home park or subdivision, the local administrator must require that the lots or pads on which mobile homes will be placed are elevated so that the lowest floor will be two feet or more above the BFE. Adequate drainage must also

be provided. These homes must also meet the anchoring (tie-down) requirements. If the mobile home is permanently anchored to a foundation, (bolted to a poured concrete or block foundation that extends below the frost line), then it meets anchoring requirements. Mobile homes placed on blocks, however, do not have adequate protection from flooding and must be tied down.

ACTING ON THE PERMIT APPLICATION

When a local administrator completes his review of a development permit application, he may approve the permit, conditionally approve the permit, or deny it.

If a permit application describes a development that will be built in compliance with floodplain regulations, the local administrator may give his approval simply by marking the appropriate box on the application form, signing it, and providing a copy to the applicant.

If the permit application describes a development that would be in violation of the floodplain ordinance, the local administrator may conditionally approve the application if the applicant agrees to modify his development. In cases where minor modifications will bring an application into compliance with the ordinance, the local administrator should work with the applicant to modify problem aspects of the development.

When a permit application is in serious violation of the floodplain ordinance, the local administrator must deny the permit and should explain to the applicant why it was denied.

APPLICANT'S OPTIONS

If an applicant is denied a permit, he has three options:

1. He may redesign his development so that it meets standards;
2. If he feels the administrator is in error, he may appeal the decision to the local governing body; or
3. If he feels the ordinance places an undue hardship on his property, he may request a variance to the ordinance.

VARIANCES

A variance is a waiver of one or more of the specific standards required in ordinances. In regard to the floodplain ordinance, the general rule of thumb is: Variances should not be granted.

This statement is based on the idea that a variance represents a community's approval to set aside floodplain regulations that were adopted to reduce loss of life and property due to flood damages. While the impact of a single variance on flood hazards

may not be significant, the cumulative impact of several variances may be severe.

If a developer requests a variance, however, the community should have a consistent and fair policy to deal with such requests. The model ordinance in the appendix addresses variance in Section 4.4. It establishes an appeal board to act on variances. This board may be the city council, planning and zoning commission, or an independent body, whichever best suits the needs of the community.

Section 4.4 also sets guidelines for the appeals board to use in reviewing variance requests. Generally, variances may be granted only if:

- there is good and sufficient cause;
- failure to grant a variance would result in exceptional hardship to the applicant;
- the variance will not result in increased flood hazards elsewhere;
- the proposed use would be adequately floodproofed;
- a reasonable location outside the floodplain is not available;

- and, most importantly, approval of the Floodplain Management Section is obtained prior to approving any variance.

Regarding variances, NFIP regulations list two important documentation requirements:

1. The granting of a variance does not lessen or waive any insurance premium rates. Consequently, when a variance is granted, the local administrator must provide written notification to the applicant that a project granted a variance is not exempt from the insurance requirements. In some instances, a variance may result in increased insurance premium rates that could go as high as \$25 per \$100 of coverage.
2. Any community granting a variance must maintain a record of all variance actions. This would include the justification for granting the variance, a record of the appeals proceedings, and a copy of the written notification referred to above.

ENFORCEMENT

A floodplain ordinance cannot reduce the severity of flood damages unless it is properly enforced. Adequate, uniform, and fair enforcement requires two things:

1. That all new developments or substantial improvements to existing developments have a permit; and

2. That all developments with a permit be built to the standards of the Montana Floodplain and Floodway Management Act and the NFIP.

Communities need to establish a procedure to ensure that these two requirements are met. For example, the best way to ensure compliance with the first requirement is to have a permit form displayed at the development site. Such a form could be brightly colored, so that it is easily seen. It should be printed on durable waterproof cardboard to withstand outdoor conditions during the construction period. When construction is taking place without a permit, local officials or neighbors can easily report such occurrences to the local administrator.

Communities can ensure the development is actually being built to standards by having the local administrator make periodic inspections during the construction period. Such inspections should be documented in the project file.

Communities may also consider establishing a "Certificate of Occupancy" system which would prohibit anyone from occupying a new structure before it is inspected to ensure that all community building codes, including the floodplain ordinance, have been met. Before a Certificate could be issued in the flood hazard area, a statement would have to be submitted by a registered engineer, architect, or surveyor certifying the lowest floor or floodproofing elevation.

Violations

If a local administrator becomes aware that development is occurring in the floodplain without a permit or contrary to permitted plans, he should consult with the community's attorney. Together, they should try to persuade the developer to comply with the floodplain ordinance. If the developer refuses to comply, the attorney must take legal action.

Enforcement of the floodplain ordinance must not be taken lightly. Communities that do not strictly maintain a permit system or that are lax in their enforcement responsibilities violate the agreement they have with the National Flood Insurance Program. The consequences of noncompliance for communities participating in the NFIP are listed below.

Penalties For Noncompliance

Communities opting not to participate in the National Flood Insurance Program (NFIP) or communities that are suspended from the NFIP for not enforcing an effective floodplain ordinance are subject to the following consequences:

1. Flood insurance will not be available. No resident will be able to purchase a flood insurance policy.

2. Federal agencies may not provide grants or loans for buildings in identified special flood hazard areas of communities

not participating in the NFIP. This includes agencies such as Housing and Urban Development, the Small Business Administration, the Economic Development Administration, and the Environmental Protection Agency.

3. No Federal mortgage insurance may be provided in identified flood hazard areas. This includes FHA, VA, and Farmers Home or federally backed mortgage guarantees.

4. In the event of a federally declared flood disaster, no federal disaster assistance would be made available to identified flood hazard areas in nonparticipating communities.

5. After FEMA establishes base flood elevation data, communities that delay entry into the program make all interim construction in flood hazard areas too expensive to insure and therefore resell. If a community decides to enter or reenter the NFIP, subsidized insurance rates will be available only for those homes built before BFE data were received. When interim construction is up for sale, all federally insured lending institutions will require flood insurance before issuing loans if the construction is in a floodprone area. Prospective purchasers may find they cannot afford the NFIP insurance, which may run as high as \$25 per \$100 of coverage.

6. Finally, local governing bodies may be susceptible to some form of liability by not participating in the NFIP. Their

decision denies citizens the opportunity to purchase flood insurance and can be seen as a choice not to reduce exposure of life and property to flood damage, even though authoritative scientific and technical data show flood damage is likely.

Some factors that might make a community want to reestablish eligibility in the NFIP include:

- a governing body with new policies;
- desire for a larger share of the mortgage market through FHA, VA, Farmers Home loans;
- the desire for a federal grant or loan for a particular project (e.g., a sewage treatment plant);
- a major disaster, triggering need for disaster aid; or
- changed political pressures.

RECORD KEEPING

Record keeping is an extremely important part of a community's responsibility when participating in the NFIP. Specifically, the following records must be kept on file and be available for public inspection

1. A complete and up-to-date copy of the floodplain ordinance, the flood map (FHBM or FIRM), and the Flood Insurance Study (FIS). If the FIS has not been completed, the community should obtain and maintain the best flood hazard data available for the area and use it in regulating floodplain development.

2. A record of the elevation of the lowest habitable floor (including the basement) of all new or substantially improved structures in the Special Flood Hazard Area. For floodproofed structures, there must be a record of the elevation to which they have been floodproofed. Local administrators must require developers to complete the Postconstruction Elevation Certification form in the appendix to meet this NFIP requirement.

3. A project file for each development permit application. This file should contain:

- a copy of all permit applications;
- a copy of the permit review checklist;
- copies of all pertinent correspondence relating to the project;
- any variance or appeals proceedings;
- documentation of inspections of the development;

- base flood elevation data for subdivisions of 5 acres, 50 lots, or larger;
- preconstruction certification forms for floodproofing, and postconstruction certification forms indicating the lowest floor elevation of all structures; and
- a copy of the certificate of occupancy, where applicable.

4. A file for the Biennial Reports that must be submitted to the Federal Emergency Management Agency every two years. The local administrator may want to keep the following information in this file:

- Copies of previous Biennial Reports;
- A running total of permits and variances granted in the flood hazard areas;
- Maps of new annexations or other boundary changes;
- Census data;
- Records of any major natural or man-made changes affecting flooding patterns.

The Biennial Report will be easy to complete if this information is readily available in one place.

LOCAL ADMINISTRATOR

NFIP regulations require a community to designate an official with the responsibility, authority, and means to implement the ordinance they have adopted in compliance with the NFIP. The designation of an administrator is incorporated into the text of the model ordinance in appendix B.

Fair administration is the key to a successful permit system. To ensure fair administration, the person selected as the administrator must have basic knowledge of construction and must understand the NFIP. He must also have the support of the local governing body.

Oftentimes, particularly in small communities, the position of floodplain administrator is part-time. The administrator may also be the building inspector, zoning administrator, or clerk. When the floodplain administrator cannot devote fulltime to the job, he or she is in special need of the cooperation and support of all other community officials and departments in implementing the floodplain ordinance.

The local administrator's job is not an easy one. If questions or problems arise, technical assistance is available from the

state Floodplain Management Section. The phone number and address are found inside the front cover.

The duties of the local floodplain ordinance administrator are summarized below.

Administration of the Development Permit System

The local administrator is responsible for all aspects of the development permit process, including:

- making permit application forms available to prospective developers;
- reviewing all permits to determine whether they are in compliance with the ordinance;
- when FEMA has not provided base flood elevation data, obtaining the best available data from other sources to use in reviewing permits;
- approving, conditionally approving, or denying all permit applications;
- following up on all permits granted with inspections; and
- initiating enforcement proceedings necessitated by ordinance violations.

Record Keeping

The local administrator must obtain and maintain all the information described in the record-keeping section of this chapter.

Watercourse Alteration Notification

If a development permit application proposes a watercourse (stream, river, drainage ditch) alteration, the local administrator must notify adjacent communities and the state Floodplain Management Section of the proposed action. Such alterations must also be explained to the Federal Emergency Management Agency in the Biennial Report.

Interpretation of Map Boundaries

When there is a conflict between the boundary on the flood map issued by FIA and actual field conditions, the local administrator must make interpretations as to the exact boundaries of the flood hazard area. The local administrator does not, however, have to determine a particular structure's location on the map for flood insurance purchase requirements of lending institutions. That decision rests with the lender.

Submission of Information

Copies of permits, variances, and biennial reports must be sent to the state Floodplain Management Section.

CHAPTER V: OTHER FLOOD MANAGEMENT MEASURES

Participation in the National Flood Insurance Program is one way a community can protect new development from flood hazards and reduce potential flood damage to existing homes and businesses. It is not, however, the only way. In fact, overall reduction of flood damage is more likely if local officials combine their floodplain development regulations with other activities that also reduce flood damages. This chapter briefly discusses a comprehensive approach local officials can take to effectively alleviate repetitive flood damage.

Floodplain management can be defined as combined actions designed to reduce the damages from flood disasters. These actions may modify the flood itself, reduce susceptibility to flooding, prepare for an efficient response to and recovery from a flood disaster. Local officials may use a combination of these strategies to provide for the greatest amount of protection at the least expense.

MODIFYING FLOODS

Structural measures can modify floods and reduce flood damages. Large dams and reservoirs can control the flow of river systems. Smaller dams, dikes, floodwalls, and other structures can reduce local flooding. In some cases, channels may be altered to

enlarge their capacities, to stabilize banks and prevent erosion, and to clear away vegetation, rocks, or other features that obstruct the flow of floodwaters. Diversions and spillways employing natural or constructed channels can be installed to divert flood flows from developed areas.

Land-treatment measures help increase absorption of rainfall into the soil and decrease runoff rates, which can result in reduced flood peaks. Such techniques include planting and maintaining vegetation to act as runoff interceptors and diversions, installing small detention and erosion control structures, and constructing terraces. Detention measures, such as landscaped or paved holding areas, can be built into development sites to lower the runoff rate of rainfall and, thereby, reduce the flood peaks of collecting streams.

While structural measures are often a popular answer to flooding problems, reliance on structures as the only solution to these problems has several disadvantages. Some of these are listed below.

- Structural measures are generally expensive, which can make such solutions economically infeasible.
- In many cases, structures encourage investment and development in flood-prone areas, thereby exposing more properties to the flood hazard.

- Structures do not provide absolute protection. They offer a false sense of security. If a flood disaster does exceed the design for a structure, damages are far greater than they may have been if fear of flooding had discouraged development.
- Gains in one area, such as protection for urban areas, may be offset by losses in other areas, such as inundation of agricultural or unique recreational areas. In other words, the structural measure simply relocates the flood rather than reducing the hazard.
- Structural techniques used alone often must be larger and exert a greater degree of man-made influence over the watercourse and other resources than would be necessary if land-use controls were used to direct future development away from flood-prone areas.

REDUCING SUSCEPTIBILITY TO FLOODS

There are several methods a local government can use to keep new buildings or land development from being damaged or from making flood problems worse in existing developments. An obvious method is participation in the National Flood Insurance Program.

A community's participation in the NFIP, however, should be incorporated into a floodplain management program that is closely linked with the community's overall land-use planning or growth

management program. When floodplain management is consistent with a community-wide planning effort, goals for flood protection can be related to goals for economic development, housing, utilities, recreation, services, and the like. The techniques used to achieve these goals should encourage a coordinated approach to development that is sensitive to the community's economic, social, and environmental needs. Some useful techniques and examples of their application are listed below.

-Zoning is the most common means of managing future development. Communities may consider restricting floodplain areas to agricultural, recreational, open space, or other low density uses. Or, setbacks from stream corridors and floodplains can be written into a zoning ordinance. This may suffice to restrict development in the floodway and immediately adjacent to a stream.

-Public Development. Policies governing the location, construction, design, and use of public buildings or facilities (roads, sewers, utilities, and the like) can effectively reduce susceptibility to flooding. Because private development depends on the availability of publicly provided facilities, policies governing these facilities can have considerable influence in guiding private development away from hazardous floodplain areas.

-Public Awareness. Programs to develop public awareness can be very effective in reducing susceptibility to flood damages. Local governments could establish programs that include notifying buyers of flood-prone property. Disclosure of flood hazards is already required of realtors before transactions take place. Advice on self-protection in the event of a flood or encouragement to purchase flood insurance also could be given. Well-informed people are less likely to be caught unaware and unprepared for a flood disaster.

-Acquisition of flood-prone properties. This course of action may be easier for some communities than regulating development of flood-prone areas. If this is the case, communities may need to realign their capital budgets. Communities may also acquire easements or development rights which would allow private ownership of floodplain areas and their continued use for low hazard purposes (like agriculture). For highly flood-prone developed areas, permanent evacuation may be necessary. In such cases, communities need to budget for actual acquisition and relocation.

-Tax Incentives. Tax Incentives for floodproofing structures (modifying or elevating) are an option local governments may use to encourage individuals to reduce their susceptibility to flooding. A community may also consider establishing a fund to make low-interest loans available to residents for floodproofing purposes.

RESPONSE TO AND RECOVERY FROM FLOODS

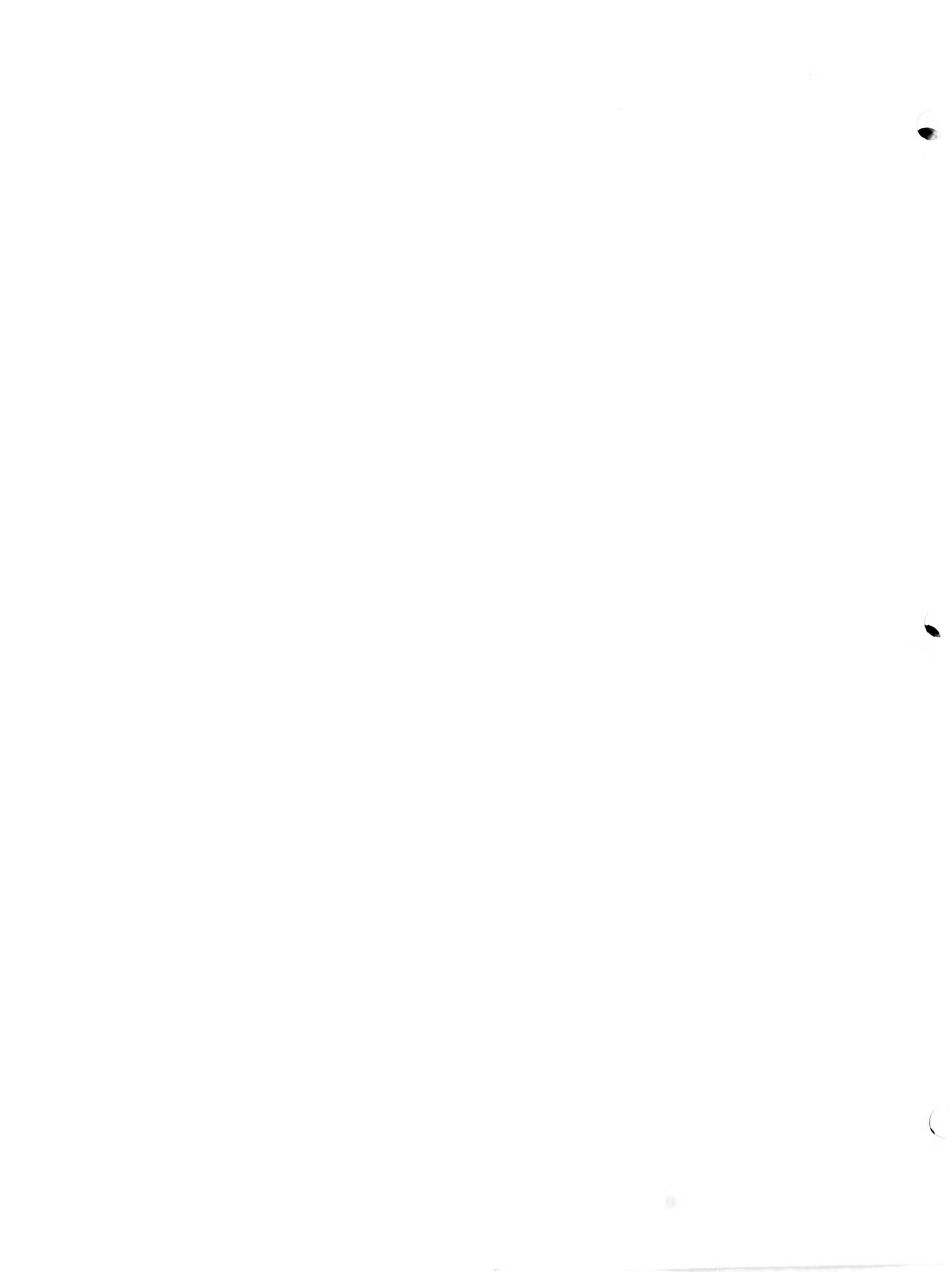
A local government can take several steps to prepare for, deal with, and recover from a flood disaster. These will effectively minimize the impact of the flood threat.

Timely and accurate warning is a major factor in the protection of life and property from flood disasters. While the federal government (through the National Weather Service) is generally responsible for disaster prediction, it is the local government that must be sure the general public is warned in sufficient time to take protective action. Well-organized systems to effectively disseminate flood warning information need to be established by local governments in cooperation with the local media.

When a flood is imminent, local governments should have an emergency operations plan that outlines an efficient response. The plan should include flood watch and dike patrol systems, methods to organize volunteers, emergency flood fighting and sandbagging procedures, inventories of materials and equipment needed for the flood fight, establishment of emergency shelters and medical facilities, and description of evacuation routes, rescue operations, or other contingency actions needed in the event of a dike or dam failure. An emergency operations plan should also spell out the chain of command and organizational structure for directing a flood fight. Local governments can

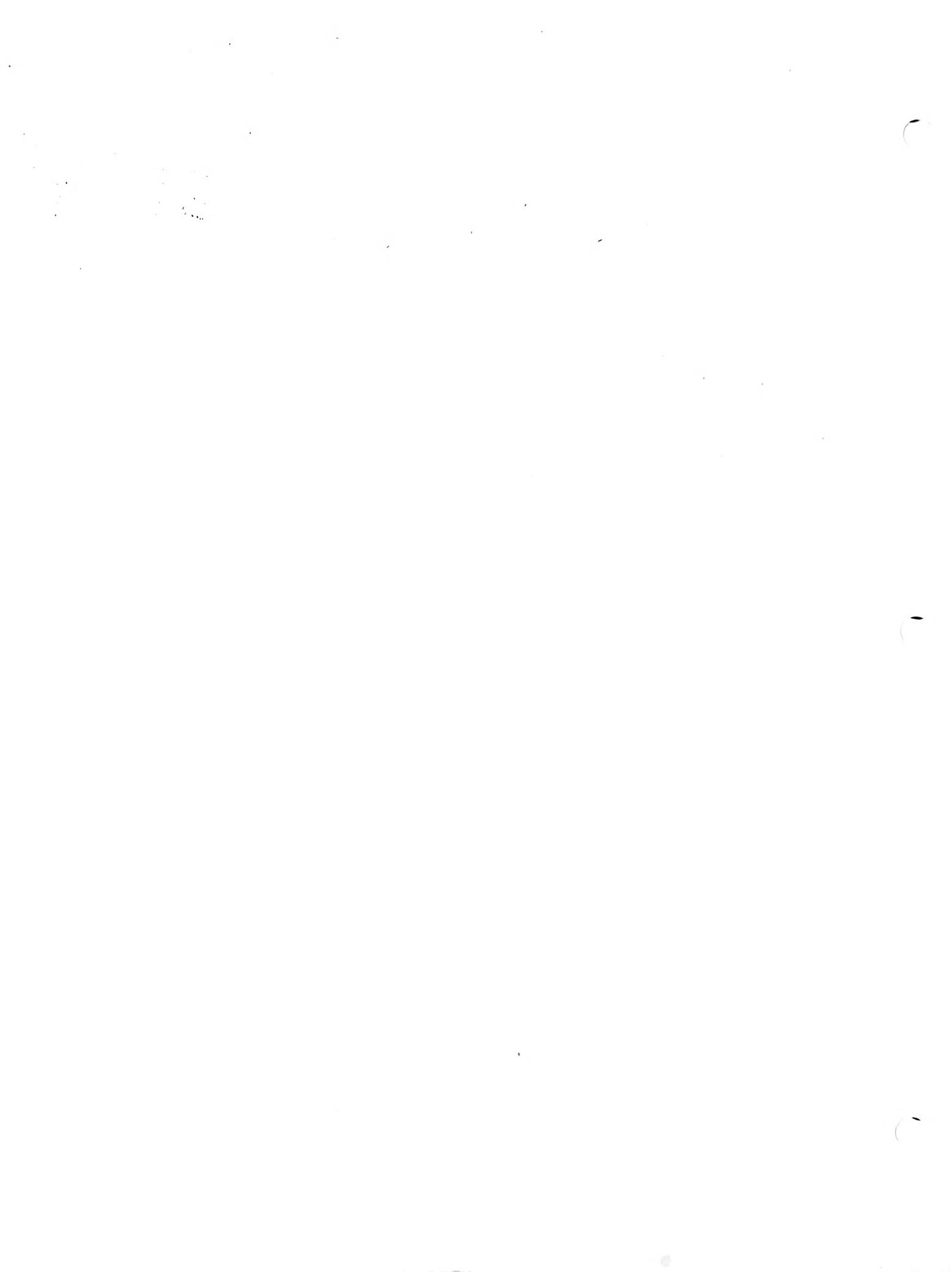
receive assistance in preparing a disaster plan from the Disaster and Emergency Services Division of the Department of Military Affairs. An address and phone numbers for the division are inside the front cover.

Once a flood has receded, the recovery period can extend for several months. Local governments should ensure that flood victims' needs are met by facilitating state and federal disaster assistance programs (temporary housing, loans, or grants), or by establishing their own recovery-aid programs. Local governments also may want to make tax adjustments for flood victims. By developing and implementing a comprehensive floodplain management program that uses many of the techniques described above, local officials can effectively protect their citizens from all but the worst flood disasters. At the same time, a floodplain management program, through careful planning, can guide the type and manner of floodplain use so that it is consistent with a community's long-range goals and land-use needs.



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FLOODPLAIN MANAGEMENT LAWS AND REGULATIONS

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PART 58-[RESERVED]

NATIONAL FLOOD INSURANCE
PROGRAM

PART 59—GENERAL PROVISIONS

Subpart A—General

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AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

Source: 41 FR 46968, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 59.1 Definitions.

As used in this subchapter—

“Accounting period” means any annual period during which the Agreement is in effect. Each accounting period under the Agreement applies separately to all policies issued under the Program during the time period.

“Act” means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

“Actuarial rates”—see “risk premium rates.”

“Administrator” means the Federal Insurance Administrator, to whom the Director has delegated the administration of Program (34 FR 2680-81, February 27, 1969, as amended 39 FR 2787, January 24, 1974).

“Affiliates” means two or more associated business concerns which are or can be directly or indirectly controlled by one or more of the affiliates or by a third party.

“Agency” means the Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

“Agreement” means the contract entered into for the term of any accounting period by and between the Administrator and the Association whereby the Association or its subcontractors will sell policies of flood insurance under the Program within areas designated by the Administrator and will adjust and pay claims for losses arising under such policies. The Agreement is renewed automatically with respect to each subse-

quent accounting period unless either the Administrator or the Association gives the other written notice of intention to terminate on or before January 31 of the then current accounting period.

“Applicant” means a community which indicates a desire to participate in the Program.

“Appurtenant Structure” means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

“Area of shallow flooding” means a designated A0 or V0 Zone on a community’s Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Area of special flood-related erosion hazard” is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

“Area of special flood hazard” is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, A0, A1-99, V0, and V1-30.

“Area of special mudslide (i.e., mudflow) hazard” is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

“Association” means the National Flood Insurers Association discussed in Parts 61 and 62 of this subchapter, and is the private insurance industry pool composed of two or more of its members or any member acting for or on behalf of the Association under the Agreement.

“Base flood” means the flood having a one percent chance of being equalled or exceeded in any given year.

“Building”—see “structure.”

“Chargeable rates” mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

“Chief Executive Officer” of the community (“CEO”) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

“Coastal high hazard area” means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30.

“Community” means any State or area or

political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

“Contents coverage” is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

“Criteria” means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in Part 60 of this subchapter.

“Curvilinear Line” means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

“Deductible” means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer’s liability.

“Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

“Director” means the Director of the Federal Emergency Management Agency.

“Eligible community” or “participating community” means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

“Emergency Flood Insurance Program” or “emergency program” means the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

“Erosion” means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

“Exception” means a waiver from the provisions of Part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

“Existing construction” means for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

“Existing mobile home park or mobile home subdivision,” means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is

to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of flood plain management regulations adopted by a community.

"Expansion to an existing mobile home park or mobile home subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

"Existing structures" see *"existing construction."*

"Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

"Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

"Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance; other than general or special revenue sharing or formula grants made to States.

"Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

"First-layer coverage" is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

"Flood" or *"Flooding"* means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused or precipitated by accumulations of water on or under the ground.

(b) The collapse or subsidence of land

along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (a)(1) of this section.

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Hazard Boundary Map" (FHB) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zone A, M, and/or E.

"Flood insurance" means the insurance coverage provided under the Program.

"Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study" see *"Flood elevation study."*

"Flood plain" or *"flood-prone area"* means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed

in conformance with sound engineering standards.

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or *"flood-related erosion prone area"* means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

"Floodway"—see *"regulatory floodway."*

"Floodway encroachment lines" mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"General Counsel" means the General counsel of the Federal Emergency Management Agency.

"Habitable Floor" means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "Habitable Floor."

"Independent scientific body" means a non-federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

"Insurance adjustment organization" means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

"Insurance company" or *"insurer"* means any person or organization authorized to engage in the insurance business under the laws of any State.

"Mangrove stand" means an assemblage of mangrove trees which are mostly low

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trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rizophora Mangle*); white mangrove (*Laguncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

Map" means the Flood Hazard Boundary Map (FHB) or the Flood Insurance Rate map (FIRM) for a community issued by the Federal Insurance Administration.

"Mean sea level" means the average height of the sea for all stages of the tide.

"Mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers. The term includes, but it is not limited to, the definition of "mobile home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 CFR 3282.7(a)).

"Mobile home park or mobile home subdivision"—see "existing mobile home park or mobile home subdivision" or "new mobile home park or mobile home subdivision."

"Mudslide" (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on or under the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

"Mudslide (i.e., mudflow) prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

"Mudslide (i.e., mudflow) area management" means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

"National Flood Insurers Association" is the industry flood insurance pool authorized by the Director in accordance with sections 1331 and 1332 of the Act (see "Agreement" and "Association") (42 U.S.C. 4051-4052). The Association headquarters are currently located at 1755 South Jefferson Davis Highway, Suite 1102, Arlington, Virginia 22202 (703) 920-8830.

"New construction" means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later. For flood plain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community.

"New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of flood plain management regulations adopted by a community.

"100-year flood" see "base flood."

"Participating community," also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

"Policy" means the Standard Flood Insurance Policy.

"Premium" means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

"Project cost" means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

"Regular Program" means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Risk premium rates" mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Second layer coverage" means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program only where authorized by the Administrator.

"Servicing company" means a corporation, partnership, association, or any other organized entity which subcontracts with the National Flood Insurers Association to service insurance policies under the National Flood Insurance Program for a particular area.

"Sheet flow area"—see "area of shallow flooding."

"Special Hazard Area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a FHB or FIRM as Zone A, A0, A1-99, V0, V1-30, M or E.

"Standard Flood Insurance Policy" means the flood insurance policy issued by the National Flood Insurers Association pursuant to Federal statutes and regulations.

"Start of construction" means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

"State" means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

"State coordinating agency" means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

"Storm cellar" means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

"Structure" means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home. "Structure" for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Subsidized rates" mean the rates established by the Administrator involving in the aggregate a subsidization by the Federal Government.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief by a community from the terms of a flood plain management regulation.

"Water surface elevation" means the projected heights in relation to Mean Sea Level reached by floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§59.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, August 1, 1968) to

provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in §59.1) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969). Flood-related erosion (as defined in §59.1) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as a community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, shall be provided within such an area unless the community in which the area is located is then participating in the Program, subject to certain exceptions. See FIA published Guidelines at §59.4(c).

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at Part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

(c) Minimum requirements for adequate flood plain management regulations are set forth in §60.3 for flood-prone areas, in §60.4 for mudslide (i.e., mudflow) areas and in §60.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

(41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979)

§59.3 Emergency program.

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new

Section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program, which under existing law extends to September 30, 1978, does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to Part 60 of this subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and or higher limits of coverage for existing structures.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§59.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

(1) National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), Pub. L. 90-448, approved August 1, 1968, 42 U.S.C. 4001 et seq.

(2) Housing and Urban Development Act of 1969 (Pub. L. 91-152, approved December 24, 1969).

(3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Pub. L. 93-234, approved December 31, 1973.

(4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Pub. L. 93-383, approved August 22, 1974.

(5) Pub. L. 5-128 (effective October 12, 1977).

(6) The above statutes are included in 42 U.S.C. 4001 et seq.

(b) The following are references relevant to the National Flood Insurance Program:

(1) Executive Order 11988 (Flood-plain Management, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(2) The Flood Control Act of 1960 (Pub. L. 86-645).

(3) Title II, section 314 of Title III and section 406 of Title IV of the Disaster Relief Act of 1974 (Pub. L. 93-288).

(4) Coastal Zone Management Act (Pub. L. 92-583), as amended Pub. L. 94-370.

(5) Water Resources Planning Act (Pub. L. 89-90), as amended Pub. L. 94-112 (October 16, 1975).

(6) Title I, National Environmental Policy Act (Pub. L. 91-190).

(7) Land and Water Conservation Fund Act (Pub. L. 89-578), and subsequent amendments thereto.

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(8) Water Resources Council, Principles and Standards for Planning, Water and Related Land Resources (38 FR 24778-24869, September 10, 1973).

(9) Executive Order 11593 (Protection and Enhancement of the Cultural Environment), dated May 13, 1971 (36 FR 8921, May 15, 1971).

(10) 89th Cong., 2nd Session, H.D. 465.

(11) Required land use element for comprehensive planning assistance under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR § 600.72).

(12) Executive Order 11990 (Protection of Wetlands, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(13) Water Resources Council (Guidance for Floodplain Management) (42 FR 52590, September 30, 1977).

(14) Unified National Program for Floodplain Management of the United States Water Resources Council, July 1976.

(c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to the mandatory purchase of flood insurance under section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (39 FR 26186-26193, July 17, 1974; 40 FR 16710, April 14, 1975; 40 FR 54277-54278, November 21, 1975; and 41 FR 2426, January 16, 1976).

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Subpart B—Eligibility Requirements

§ 59.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

§ 59.22 Prerequisites for the sale of flood insurance.

(a) To qualify for flood insurance availability a community shall apply for the

entire area within its jurisdiction, and shall submit:

(1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A copy of the flood plain management regulations the community has adopted to meet the requirements of §§ 60.3, 60.4 and/or § 60.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

(i) Population;

(ii) Number of one to four family residences;

(iii) Number of small businesses; and

(iv) Number of all other structures.

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) will be made available for public inspection;

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and State-administered flood plain management regulations;

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

(i) Assist the Administrator at his/her request, in his/her delineation of the limits of the areas having special flood, mudslide

(i.e., mudflow) or flood-related erosion hazards;

(ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Administrator may request;

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBMs or FIRMs, any certificates of flood-proofing, and information on the elevation (in relation to mean sea level) of the level of the lowest habitable floor (including basement if habitable) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;

(v) Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBMs and FIRMs accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of his section, and

(2) Designate the official responsible to submit an annual report to the Administrator concerning the community participation in the Program including, but not limited to the development and implementation of flood plain management regulations and

(3) Utilize annual report form (OMB No. 63-R1546) as follows:

() Community _____ County _____ State _____

() Responsible Official _____ () Title _____ () Telephone _____

() Address _____

Signature _____ Date _____

() Please check this box and indicate above any change since your last annual report

1. PHYSICAL CHANGES AND RECENT FLOODING IN YOUR COMMUNITY

e. Boundary Changes. Have your community's corporate limits or boundaries changed since your last annual report? (IF YES, PLEASE ATTACH A NEW MAP SHOWING REVISED COMMUNITY BOUNDARIES).

Yes [] No []

b. Natural Changes. Have there been any natural or physical changes which would increase or decrease flooding in your community? (e.g., subsidence, pronounced erosion, seismic effects, sedimentation, or debris build-up)? (IF YES, PLEASE ATTACH THE MOST RECENT FIA FLOOD HAZARD MAP AND INDICATE THE EXTENT OF CHANGES AND THE AREAS AFFECTED).

Yes [] No []

c. Man-Made Changes. Have there been any projects or activities which would increase or decrease flooding in your community (e.g., dams, dikes, levees, bridges, storm sewers, drainage facilities, extensive filling)? (IF YES, PLEASE ATTACH THE MOST RECENT FIA FLOOD HAZARD MAP AND INDICATE THE EXTENT OF THE ACTIVITIES AND THE AREAS AFFECTED).

Yes [] No []

d. Recent Flooding. Has any flooding occurred in your community since the last annual report? (IF YES, PLEASE ATTACH THE MOST RECENT FIA FLOOD HAZARD MAP SHOWING THE AREAS AFFECTED, AND ON A SEPARATE SHEET INDICATE FOR EACH FLOOD THE OCCURRENCE DATE, WATER ELEVATION, NUMBER OF STRUCTURES DAMAGED AND ESTIMATE THE FINANCIAL DAMAGE).

Yes [] No []

2. AMENDMENTS TO EXISTING LAWS

Have any amendments relating to floods or flood areas been made to your community's code and/or flood plain management laws since your last annual report? (IF YES, PLEASE ATTACH A CERTIFIED COPY OF THE ADOPTED AMENDMENTS).

Yes [] No []

3. COORDINATION, STATISTICS, AND ESTIMATES

a. Coordination. Has your community had any problems in coordinating its flood plain management program with adjacent communities? (IF YES, PLEASE ATTACH A SEPARATE SHEET EXPLAINING THE PROBLEMS).

Yes [] No []

b. Statistics. The following data will serve as an indication of your community's effectiveness in enforcing its flood plain management measures.

	Number Requested	Number Granted
(1.) Construction permits in the flood-prone areas	_____	_____
(2.) Variances from the 100-year flood elevation requirement	_____	_____
(3.) Other variances from FIA flood plain management requirements	_____	_____
(4.) Total variances from all FIA requirements (combined total of = (2) & (3))	_____	_____
(5.) Of the total variances from all FIA requirements, how many were for structures on lots exceeding 1/2 acre?	_____	_____

a. Estimates. (Estimate the answers for the following using the best data and sources available):

Population	No. of 1-4 Family Structures	No. of Small Business Structures	No. of All Other Structures
Estimates of totals in the special flood hazard areas delineated on the FIA Flood Insurance Rate Map (i.e., using all zones except B, C, & D)	_____	_____	_____
Estimates of totals in the entire community.	_____	_____	_____

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(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to the Federal Insurance Administrator, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472.

(d) A copy of the documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted by an applicant to the appropriate State and areawide clearing-houses established in accordance with Part I of OMB Circular No. A-95 (41 FR 2052-2065, January 13, 1976). Clearing-house review of the documents shall not be a prerequisite to the Administrator's acceptance of a community's application for the availability of flood insurance under the Emergency Program. However, clearing-houses may assist the applicant in assuring maximum consistency with State, regional and local comprehensive plans and flood plain management programs.

§59.23 Priorities for the sale of flood insurance under the regular program.

Flood-prone, mudslide (i.e., mudflow) and flood-related erosion prone communities are placed on a register of areas eligible for ratemaking studies and then selected from this register for ratemaking studies on the basis of the following considerations—

(a) Recommendations of State officials;

(b) Location of community and urgency of need for flood insurance;

(c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;

(d) Availability of information on the community with respect to its flood, mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;

(e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

§59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum require-

ments of paragraphs (b), (c), (d) or (e) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, he shall, no later than 30 days before the expiration of the original six month period, provide written notice to the community and to the state and assure publication in the Federal Register under Part 64 of this subchapter, of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce or repeals its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 or § 60.5 shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing before commencing any suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and

publication in the Federal Register under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management regulations adopted in compliance with the requirements of this Subpart, together with evidence of action taken by the community to abrogate, to the maximum extent possible, the action(s) which caused the suspension. In such cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may either conditionally reinstate the community's eligibility or withhold reinstatement for a period not to exceed one year from the date of his receipt of the submission.

(c) The Administrator shall promptly notify the Association of those communities whose eligibility has been suspended, and the Association shall promptly notify its servicing companies. Flood insurance shall not be sold or renewed in any suspended community until the Association is subsequently notified by the Administrator of the date of the community's formal reinstatement. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A—Requirements for Flood Plain Management Regulations

Sec.

- 60.1 Purpose of subpart.
- 60.2 Minimum compliance with flood plain management criteria.
- 60.3 Flood plain management criteria for flood-prone areas.
- 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.
- 60.5 Flood plain management criteria for flood-related erosion-prone areas.
- 60.6 Variances and exceptions.

Sec.

60.7 Revisions of criteria for flood plain management regulations.

60.8 Definitions.

Subpart B—Requirements for State Flood Plain Management Regulations

60.11 Purpose of this subpart.

60.12 Flood plain management criteria for State-owned properties in special hazard areas.

60.13 Noncompliance.

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

60.21 Purpose of this subpart.

60.22 Planning considerations for flood-prone areas.

60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.

60.24 Planning considerations for flood-related erosion-prone areas.

60.25 State coordination.

60.26 Local coordination.

Authority: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; Sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Requirements for Flood Plain Management Regulations

§60.1 Purpose of subpart.

(a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in §60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in §60.3 for flood-prone areas, §60.4 for mudslide areas and §60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general

requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this Part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in Subpart C of this Part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in Subpart A of this Part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this Part are encouraged and shall take precedence.

§60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of §60.3(a) in order to become eligible if a FHBW has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3 (b), (c), (d), or (e) in which to meet the requirements of the applicable paragraph. If a community has received a FHBW, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in §60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3 (c), (d), or (e) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of §60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of §60.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of §60.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of §60.5(b).

(d) Communities identified in Part 65 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide [i.e., mudflow], and flood-related erosion hazard areas) shall adopt flood plain management regulations for each type of hazard consistent with the requirements of §§60.3, 60.4 and 60.5.

(e) Local flood plain management regula-

tions may be submitted to the State Coordinating Agency designated pursuant to §60.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual reports to the Administrator pursuant to §69.22(b)(2) of this subchapter shall also submit copies of each annual report to any State Coordinating Agency.

(g) A community shall assure that its comprehensive plan is consistent with the flood plain management objectives of this Part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Administrator. Without prior approval of the Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

(i) The community, upon its receipt of the data set forth in paragraph (c), (d) or (e) of §60.3 or paragraph (b) of §60.4 or §60.5, shall inform the appropriate State and areawide clearinghouse established in accordance with Part I of OMB Circular No. A-95 (41 FR 2052-2065, January 13, 1976), that the community has a period of six months in which to adopt and submit to the Administrator adequate flood plain management regulations. (The clearinghouses are encouraged to assist the community within the six month period in developing such regulations and in assuring regional coordination.) The community shall submit to the appropriate State and areawide clearinghouse, concurrently with its submission to the Administrator, a copy of all adopted flood plain management regulations intended to comply with paragraphs (c), (d) or (e) of §60.3 or paragraph (b) of §60.4 or §60.5. Clearinghouse review, for a period not to exceed sixty days from the date a community submits flood plain management regulations to the clearinghouse, shall be provided prior to the Administrator's action on such regulations. Clearinghouse comments, or a statement by the community that no comments or recommendations have been received from the clearinghouse, should be submitted by the community to the Administrator. However, it may be necessary for the clearinghouse to review the community's regulations within a shorter time period in the event of pending action to suspend the community's Program participation, pursuant to §59.24 of this Subchapter, for failure to adopt adequate flood plain management regulations within the required six months. The Administrator, within seven working days of taking a major action on the community's flood plain management submission, shall provide a copy of his/her disposition concerning the submission to each clearinghouse from which a comment was received.

§60.3 Flood plain management criteria for flood-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has

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not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special flood hazard area designations and water surface elevations have been furnished by the Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in §64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formerly provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community, including the placement of mobile homes, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) be constructed with materials and utility equipment resistant to flood damage, and (iii) be constructed by methods and practices that minimize flood damage;

(4) Review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and

(6) Require within flood-prone areas (i)

new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHB, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) Require permits for all proposed construction and other developments including the placement of mobile homes, within Zone A on the community's FHB;

(2) Require the application of the standards in paragraphs (a)(2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHB;

(3) Require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) Obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State, or other source, until such other data has been provided by the Administrator, as criteria for requiring that (i) all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and (ii) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or floodproofed to or above the base flood level;

(5) For the purpose of the determination of applicable flood insurance risk premium rates within Zone A on a community's FHB, (i) obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under §59.22(a)(9)(iii);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Require that all mobile homes to be placed within Zone A on a community's FHB shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that (i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side; (ii)

frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side; (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and (iv) any additions to the mobile home be similarly anchored;

(9) Require that an evacuation plan indicating alternate vehicular access and escape routes be filed with appropriate Disaster Preparedness Authorities for mobile home parks and mobile home subdivisions located within Zone A on the community's FHB.

(c) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones A99 zones and unnumbered A zones on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

(1) Require the standards of paragraph (b) of this section within all A1-30 zones unnumbered A zones and AO zones, on the community's FIRM;

(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30 on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements and/or storm cellars in accordance with §60.6(b)(3) and (b)(4);

(3) Require that all new construction and substantial improvements of nonresidential structures within Zones A1-30 on the community's firm (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) Provide that where floodproofing is utilized for a particular structure in accordance with paragraphs (c)(3) and (c)(8) of this section or (b)(3) of §60.6 either (i) a registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under §59.22(a)(9)(iii); or, (ii) a certified copy of a local regulation containing detailed flood-proofing specifications which satisfy the watertight performance standards of paragraph (c)(3) of this section or (b)(3) of §60.6 shall be submitted to the Administrator for approval;

(5) Require within Zones A1-30 on the community's FIRM for new mobile home parks and mobile home subdivisions, for expansions to existing mobile home parks

and mobile home subdivisions, and for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, that (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten feet apart, and reinforcement is provided for pilings more than six feet above the ground level;

(6) Require for all mobile homes to be placed within Zones A1-30 on the community's FIRM, but not into a mobile home park or mobile home subdivision that (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided for piers more than six feet above ground level;

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the community's FIRM;

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of non-residential structures (i) have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the FIRM, or (ii) together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(9) Require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) thru (a)(4)(i) and (b)(5) thru (b)(9) of this section;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(d) When the Administrator has provided

a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones A99 zones and unnumbered A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(9) of this section;

(2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;

(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(4) Prohibit the placement of any mobile homes, except in an existing mobile home park or mobile home subdivision, within the adopted regulatory floodway.

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones, A99 zones and unnumbered A zones on the community's FIRM, and has identified on the community's FIRM Zone V1-30 (coastal high hazard area), the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(10) of this section;

(2) For the purpose of the determination of applicable flood insurance risk premium rates within Zone V1-30 on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been flood-proofed, the elevation (in relation to mean sea level) to which the structure was flood-proofed, and (iii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1-30 on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide (i) that all new construction and substantial improvements within Zones V1-30 on the community's FIRM are elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level and (ii) that a registered professional engineer or architect certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash;

(5) Provide that all new construction and substantial improvements within Zones V1-30 on the community's FIRM have the space below the lowest floor free of obstruc-

tions or be constructed with "breakaway walls" intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind-driven water is minimized. Such temporarily enclosed space shall not be used for human habitation;

(6) Prohibit the use of fill for structural support of buildings within Zones V1-30 on the community's FIRM;

(7) Prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1-30 on the community's FIRM;

(8) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30 on the community's FIRM which would increase potential flood damage.

§60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in § 64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonable safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial

improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, subdrains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

§60.5 Flood plain management criteria for flood-related erosion-prone areas.

The Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in §64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion

hazard, as it is known to the community;

(2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

(3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Administrator has delineated Zone E on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

§60.6 Variances and exceptions.

(a) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. The Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Administrator may take appropriate action under §59.24(b) of this subchapter. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedure set forth in this section. Procedures for the granting of variances by a community are as follows:

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial

improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a)(6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual report submitted to the Administrator.

(b)(1) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion prone community must adopt and submit adequate flood plain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in § 60.3, 60.4 or § 60.5. However, certain exceptions from the standards contained in this subpart may be permitted where the Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and gross inequity for a particular community. Consequently, a community proposing the adoption of flood plain management regulations which vary from the standards set forth in §§60.3, 60.4, or §60.5, shall explain in writing to the Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, and data with respect to the impact on public safety and the environment.

(2) The Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant impact on the human environment. The decision whether an (i)

Environmental Impact Statement (EIS) or (ii) a Finding of Inapplicability is required must be made by the Environmental Clearance Officer of the initiating office with the approval of the Assistant Secretary for Community Planning and Development based on review by the Director, Office of Environmental Quality and the General Counsel (Assistant General Counsel for Finance and Administrative Law) in accord with HUD Handbook 1390.1 (38 FR 19182, 19186), "Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality" which implements the National Environmental Policy Act of 1969 (Pub. L. 91-190) for FEMA programs, and guidelines of the Council on Environmental Quality (40 CFR Part 1500). Ninety or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

(3) In accordance with paragraph (b)(1) of this section, a community may propose flood plain management regulations which adopt standards for basements below the base flood level. The Administrator may approve the proposal when the basements are to be designed so that below the base flood level the structure is watertight (i.e., completely dry without human intervention during flooding) with walls impermeable to the passage of water and structural components with the capability to resist hydrostatic and hydrodynamic loads and effects of buoyancy.

(4) In accordance with paragraph (b)(1) of this section, a community may propose flood plain management regulations to permit storm cellars below the base flood level. The Administrator may approve the proposal for storm cellars (as defined in § 59.1 of this subchapter) after the community has demonstrated an historical need for storm cellars as a means of shelter against recorded occurrences of severe tornado or similar wind storm activities in the area and based upon a community's acknowledgement that (i) all new storm cellars shall be limited to nonhabitable uses, (ii) all electrical, heating and other mechanical equipment shall be above the base flood level for all new storm cellars; and (iii) the design of storm cellars shall assure that the integrity of the main structure during time of flooding is maintained.

§60.7 Revisions of criteria for flood plain management regulations.

From time to time Part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

§60.8 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

Subpart B—Requirements for State Flood Plain Management Regulations

§60.11 Purpose of this subpart.

(a) A State is considered a "community" pursuant to § 59.1 of this Subchapter; and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Administrator, pursuant to Part 75 of this subchapter, of its plan of self-insurance.

§60.12 Flood plain management criteria for State-owned properties in special hazard areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5. A State either shall:

(1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or

(2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in §§ 60.3, 60.4, and 60.5.

(b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in §§ 60.3, 60.4 and 60.5 may vary from the procedures by which local governments satisfy the criteria.

(c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a)(2) of this section for the property.

§60.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to § 60.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to suspensive action pursuant to § 59.24. Where the State fails to adequately enforce its flood plain management regulations, the Administrator shall conduct a hearing before initiating such suspensive action.

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

§60.21 Purpose of this subpart.

The purpose of this subpart is to encourage the formation and adoption of

overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

§60.22 Planning considerations for flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should:

(1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;

(2) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence of a flood disaster, each community shall consider—

(1) Preservation of the flood-prone areas for open space purposes;

(2) Relocation of occupants away from flood-prone areas;

(3) Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;

(4) Acquisition of frequently flood-damaged structures;

(c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—

(1) Human safety;

(2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;

(3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;

(4) Adverse effects of flood plain development on existing development;

(5) Encouragement of floodproofing to reduce flood damage;

(6) Flood warning and emergency preparedness plans;

(7) Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to

withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring sub-dividers to furnish delineations for floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;

(14) Requirement of setbacks for new construction within Zones V1-30 on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones A1-30 and V1-30 on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

§60.23 Planning considerations for mudslide (i.e., mudflow)/prone areas.

The planning process for communities identified under Part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to §59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

(a) The existence and extent of the hazard;

(b) The potential effects of inappropriate hillside development, including

(1) Loss of life and personal injuries, and

(2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;

(c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow-prone) and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public

acquisition of land, easements, and development rights to assure the proper development of hillsides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;

(d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filing, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and

(h) Provision for emergencies, including (1) warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow), (2) enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow), (3) fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides, (4) provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems, (5) similar provisions for sewers which in the event of rupture pose both health and site stability hazards and (6) provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);

(i) The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

§60.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under Part 65 of this subchapter

as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to §59.22 of this subchapter that they have flood-related erosion areas should include—

(a) The importance of directing future developments to areas not exposed to flood-related erosion;

(b) The possibility of reserving flood-related erosion-prone areas for open space purposes;

(c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;

(d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;

(e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

§60.25 State coordination.

(a) State participation in furthering the objectives of this part should include:

(1) Encouraging and assisting communities in qualifying for participation in the Program;

(2) Enacting where necessary, legislation to enable counties and municipalities to regulate flood, mudslide (i.e., mudflow) and flood-related erosion area development;

(3) Designating an agency of the State government to be responsible for coordinating Federal, State, and local aspects of flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management activities in the State;

(4) Assisting in the delineation of flood-related erosion areas, mudslide (i.e., mudflow) areas, riverine floodways, and coastal high hazard areas, and providing all relevant technical data to the Administrator;

(5) Establishing minimum State flood plain, mudslide (i.e., mudflow) and flood-related erosion regulatory standards consistent with those established in this Part;

(6) Guiding and assisting municipal and county public bodies and agencies in developing flood plain, mudslide (i.e., mudflow) and flood-related erosion area management plans and flood plain management regulations;

(7) Recommending priorities for rate-making studies among those communities of the State which qualify for such studies;

(8) Communicating flood plain, mudslide (i.e., mudflow) and flood-related erosion area information to local governments and to the general public;

(9) Participating in flood, mudslide (i.e., mudflow) and flood-related erosion warning and emergency preparedness programs;

(10) Assisting communities in disseminating information on minimum elevations for structures permitted in flood plain areas having special hazards, and in disseminating other information relating to mudslide (i.e., mudflow) and flood-related erosion areas having special hazards;

(11) Advising public and private agencies

(particularly those whose activities or projects might obstruct drainage or the flow of rivers or streams or increase slope instability) on the avoidance of unnecessary aggravation of flood, mudslide (i.e., mudflow) and flood-related erosion hazards;

(12) Requiring that proposed uses of flood plain, mudslide (i.e., mudflow) and flood-related erosion areas conform to standards established by State environmental and water pollution control agencies to assure that proper safeguards are being provided to prevent pollution during periods of flooding;

(13) Providing local communities with information on the Program, with particular emphasis on the coordination of State and Federal requirements pertaining to the management of flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion-prone areas;

(14) Assuring coordination and consistency of flood plain management and planning with comprehensive planning at the state, areawide and local levels;

(15) Amending state recording acts so that the following may be recorded for the public's knowledge: (i) a parcel of land and/or a structure is located within a flood-prone, mudslide (i.e., mudflow) and/or flood-related erosion prone area and (ii) a variance has been granted for building at an elevation below the base flood level, thereby resulting in increased premium rates for flood insurance under the Program.

(16) Assuring coordination between its State Coordinating Agency and any State office established to supervise state participation in the Coastal Zone Management Program;

(17) Providing notification to the Administrator in the event a participating community violates the Program's requirements;

(18) Assuring coordination efforts in the event a dispute over enactment and administration of flood plain management regulations arises between communities.

(b) For States whose flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management program substantially encompass the activities described in paragraph (a) of this Section, the Administrator shall:

(1) Give special consideration to State priority recommendations before selecting communities for ratemaking studies from the register described in §59.23 of this subchapter;

(2) Accept State approved and certified local flood plain management regulations as meeting the requirements of this Part.

§60.26 Local coordination.

(a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;

(b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;

(c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

more than one structure is not available under the Program.

§61.4 Limitations on coverage.

(a) All flood insurance made available under the Program is subject:

(1) To the Act, the Amendments thereto, and the Regulations issued under the Act;

(2) To the terms and conditions of the Standard Flood Insurance Policy, which shall be promulgated by the Administrator for substance and form, and which is subject to interpretation by the Administrator as to scope of coverage pursuant to the applicable statutes and regulations;

(3) To the specified limits of coverage set forth in the Application and Declarations page of the policy; and

(4) To the maximum limits of coverage set forth in §61.6.

(b) Insurance under the Program is available only for loss due to flood, as defined in §59.1 of this subchapter. The policy covers damage from a general condition of flooding in the area which results from other than natural causes, such as the breaking of a dam, but does not cover damage which results from causes on the insured's own property or within his control or from any condition which causes damage, which condition is substantially confined to the insured's premises or properties immediately adjacent thereto.

(c) The policy does not cover losses from rain, snow, sleet, hail, or water spray that do not result in a general condition of flooding. It covers losses from freezing or thawing, or from the pressure or weight of ice and water, only where they occur simultaneously with and as a part of flood damage. It covers losses from mudslide (i.e., mudflow) but does not cover damage from landslides or from earthquakes or similar earth movements which are volcanic or tectonic in origin. The policy does not cover erosion which is not flood-related, claims resulting from occurrences already in progress at the time of the inception date of the term of the policy, or losses caused by land slippage rather than mudslide (see definition of mudslide/mudflow in §59.1 of this subchapter). Damage by seepage and sewer backup may be covered only when directly resulting from a flooding situation. Abnormal erosion caused by high water levels accompanied by violent wave action along a lake or other body of water is considered a flood (see definition of flood-related erosion in §59.1 of this subchapter). However, there is no coverage where normal, continuous wave action, accompanied by erosion or the gradual and anticipated wearing away of the land is the proximate cause of property damage.

(d) The policy protects against loss to contents only at the location described in the application, except that contents necessarily removed from the premises for preservation from a flood are protected against loss or damage from flood at the new location, if placed in a fully enclosed building, pro rata for a period of 45 days.

§61.5 Special terms and conditions.

(a) No new flood insurance or renewal of

PART 61—INSURANCE COVERAGE AND RATES

Sec.

- 61.1 Purpose of part.
- 61.2 Definitions.
- 61.3 Types of coverage.
- 61.4 Limitations on coverage.
- 61.5 Special terms and conditions.
- 61.6 Maximum amounts of coverage available.
- 61.7 Risk premium rate determinations.
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- 61.9 Establishment of chargeable rates.
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- 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy.
- 61.12 Rates based on a flood protection system involving Federal funds.
- 61.13 Standard Flood Insurance Policy.
- 61.14 Standard Flood Insurance Policy Interpretations.
- 61.15 Assumption of liabilities under all Outstanding Flood Insurance Policies issued by the National Flood Insurers Association.

Appendix A—Standard Flood Insurance Policy; Dwelling and General Property Forms.

Authority: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3835(d); sec. 1306, 82 Stat. 575 (42 U.S.C. 4013); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

Source: 43 FR 2570, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§61.1 Purpose of part.

This Part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds. The specific communities eligible for coverage are designated by the Administrator from time to time as applications are approved under the emergency program and as ratemaking studies of communities are completed prior to the regular program. Lists of such communities are periodically published under Part 64 of this subchapter.

§61.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§61.3 Types of coverage.

Insurance coverage under the Program is available for structures and their contents. Coverage for each may be purchased separately. One policy to provide insurance for

flood insurance policies shall be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (i.e., mudflow) or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application.

(c) Because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if the insurer ceases to have an ownership interest in the covered property at the location described in the policy. Refunds of premiums for any other reason are subject to the conditions set forth in § 62.5 of this subchapter.

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is: (1) For structural losses, \$200, and (2) for contents losses, \$200.

(e) Payment for a loss under the policy does not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate flood occurrence, but all losses arising out of a continuous or protracted occurrence are deemed to have arisen out of a single occurrence.

(f) The following property and contents for residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, and coins or stamps;

(2) Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open;

(3) Land values, lawns, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure;

(4) Animals, birds, fish, aircraft, motor vehicles including parts and equipment (other than motorized equipment pertaining to the service of the premises and not licensed for highway use), trailers on wheels, watercraft including their furnishings and equipment; or business property.

(g) The following property and contents for nonresidential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, and coins or stamps;

(2) Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; personal property in the open;

(3) Land values, lawns, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure;

ways and other paved or poured surfaces outside the foundation walls of the structures;

(4) Automobiles including parts and equipment, any self-propelled vehicle or machine, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured; watercraft or aircraft.

(h) The policy on an eligible property may be cancelled by the insurer only for nonpayment of premium. However, any willful misrepresentation or concealment of any material fact by the insured at any time voids the entire policy as of the date the wrongful act was committed, but does not affect coverage prior to the date of the wrongful act.

(i) The standard flood insurance policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent.

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

	Emergency program		Regular program
	First layer	Second layer	Total amount available
<i>Single family residential</i>			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	35,000	150,000	185,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	¹ 150,000	185,000
<i>Other residential</i>			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	150,000	¹ 150,000	250,000
Small business	100,000	150,000	250,000
Churches and other properties	100,000	100,000	200,000
<i>Contents</i>			
Residential	10,000	50,000	60,000
Small business	100,000	200,000	300,000
Churches, other properties (per unit)	100,000	100,000	200,000

¹ Note.—Add to 35,000

² Note.—Add to 100,000

(b) The maximum limits of coverage required under the Act are twice the amounts available under First Layer Coverage.

§ 61.7 Risk premium rate determinations.

(a) Pursuant to section 1307 of the Act, the Administrator is authorized to undertake studies and investigations to enable him/her to estimate the risk premium rates necessary to provide flood insurance in accordance

with accepted actuarial principles, including applicable operating costs and allowances. Such rates are also referred to in this subchapter as "actuarial rates."

(b) The Administrator is also authorized to prescribe by regulation the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the Program. Such rates are referred to in this subchapter as "chargeable rates." For areas having special flood, mudslide (i.e., mud-

flow), and flood-related erosion hazards, chargeable rates are usually lower than actuarial rates.

§ 61.8 Applicability of risk premium rates.

Risk premium rates are applicable to all flood insurance made available for:

(a) Any structure, the construction or substantial improvement of which was started after December 31, 1974 or on or after the effective date of the initial FIRM, whichever is later.

(b) Coverage which exceeds the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands, and Guam (i) \$35,000 aggregate liability for any property containing only one unit, (ii) \$100,000 for any property containing more than one unit, and (iii) \$10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) \$50,000 aggregate liability for any property containing only one unit, (ii) \$150,000 for property containing more than one unit, and (iii) \$10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) \$100,000 for the structure and (ii) \$100,000 for contents of any such unit.

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this Part would exceed the risk premium rates.

§61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per \$100 of flood insurance are established as follows for all areas designated by the Administrator Under Part 64 of this subchapter for the offering of flood insurance:

Rates for new and renewal policies

Type of structure	Rate per year per \$100 coverage on structure	Rate per year per \$100 coverage on contents
(1) Residential	\$0.25	\$0.35
(2) All other (including hotels and motels and motels with normal occupancy of less than 6 months in duration)40	.75

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

§61.10 Minimum premiums.

The minimum premium required for any policy, regardless of the amount of coverage, is \$25. The minimum premium required for any added coverage or increase in the amount of coverage during the term of an existing policy is \$4, regardless of the unexpired term of the policy at the time of the change.

§61.11 Effective date and time of coverage under the Standard Flood Insurance Policy.

(a) The effective date and time of any new or added or increase in the amount of flood insurance coverage shall be 12:01 a.m. of the day following the application date and the presentment of payment of premium in the following cases:

(1) During the 30-day period which follows a community's initial eligibility for flood insurance under the emergency program;

(2) During the 30-day period which follows a community's initial eligibility for flood insurance under the regular program;

(3) At any time as to any application for additional coverage or increased limits made in connection with a policy then in force.

(b) Where title to property is conveyed, any new or added coverage or increase in the amount of coverage with respect to the property shall be effective as of the time title to the property is transferred to the purchaser when:

(1) The flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the transfer of title; or

(2) The existing flood insurance policy on the property was assigned to the purchaser at or before the transfer of title to the property.

(c) Except as provided by (a) or (b) of this section the effective date and time of any new policy shall be 12:01 a.m. (local time) on the 5th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on April 1 to cover property located in a community that has been participating in the program longer than 30 days will become effective at 12:01 a.m. on April 6.

(d) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy. The additional premium for any new coverage or increase in the amount of coverage shall be calculated pro rata in accordance with the rates currently in force, with a minimum premium of \$4.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (43 FR 7719, February 24, 1978))

[43 FR 50427, Oct. 30, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§61.12 Rates based on a flood protection system involving Federal funds.

(a) Where the Administrator determines that a community has made adequate progress on the construction of a flood protection system involving federal funds which will significantly limit the area of special flood hazards, the applicable risk premium rates for any property, located within a special flood hazard area intended to be protected directly by such system will be those risk premium rates which would be applicable when the system is complete.

(b) Adequate progress in paragraph (a) of this section means that the community has provided information to the Administrator sufficient to determine that substantial completion of the flood protection system has been effected because:

(1) 100 percent of the total financial project cost of the completed flood protection system has been authorized;

(2) At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;

(3) At least 50 percent of the total financial project cost of the completed flood protection system has been expended;

(4) The flood protection system's physical features are under construction and 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

(5) The community has not been responsible for any delay in the completion of the system.

(c) Each request by a community for a determination must be submitted in writing to the Engineering Division, Office of Flood Insurance, Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472, and contain a complete statement of all relevant facts relating to the flood protection system, including, but not limited to, supporting technical data (e.g., U.S. Army Corps of Engineers flood protection project data), cost schedules, budget appropriation data and the extent of federal funding of the system's construction. Such facts shall include information sufficient to identify all persons affected by such flood protection system or by such request: a full and precise statement of intended purposes of the flood protection system; and a carefully detailed description of such project, including construction completion target dates. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. Relevant facts reflected in documents, however, must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of paragraph (b) of this section, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the person responsible for preparing the application for the community, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and the purpose of that litigation. The request must also contain a statement as to whether the community has previously requested a determination with respect to the same subject matter from the Administrator, detailing the disposition of such previous request. As documents become part of the file and cannot be returned, the original documents should not be submitted.

(d) The effective date for any risk premium rates established under this section shall be the date of final determination by the Administrator that adequate progress toward completion of a flood protection system has been made in a community.

(e) A responsible official of a community which received a determination that adequate progress has been made towards completion of a flood protection system shall certify to the Administrator annually on the

anniversary date of receipt of such determination that no present delay in completion of the system is attributable to local sponsors of the system, and that a good faith effort is being made to complete the project.

(f) A community for which risk premium rates have been made available under section 1307(e) of the National Flood Insurance Act of 1968, as amended, shall notify the Administrator if, at any time, all progress on the completion of the flood protection system has been halted or if the project for the completion of the flood protection system has been canceled.

§61.18 Standard Flood Insurance Policy.

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in Appendix "A" hereto ("General Property" and "Dwelling Building and Contents") and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

(b) *Endorsements.* All endorsements to the Standard Flood Insurance Policy shall be final upon publication in the FEDERAL REGISTER for inclusion in Appendix A.

(c) *Applications.* The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy.

(d) *Waivers.* The Standard Flood Insurance Policy and required endorsements must be used in the Flood Insurance Program, and no provision of the said documents shall be altered, varied, or waived other than through the issuance of an appropriate amendatory endorsement, approved by the Administrator as to form and substance for uniform use.

(e) *Oral and written binders.* No oral binder or contract shall be effective. No written binder shall be effective unless issued with express authorization of the Administrator.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979 and amended at 44 FR 62517, Oct. 31, 1979]

§61.14 Standard Flood Insurance Policy Interpretations.

(a) *Definition.* A Standard Flood Insurance Policy Interpretation is a written determination by the Administrator construing the scope of the flood insurance coverage that has been and is provided under the policy.

(b) *Publication and requests for interpretation.* The Administrator shall, pursuant to these regulations from time to time, issue interpretive rulings regarding the provisions of the Standard Flood Insurance Policy. Such Interpretations shall be published in the Federal Register, made a part of Appendix C to these regulations, and incorporated by reference as part of these regulations. Any policyholder or person in privity with a policyholder may file a request for an interpretation in writing with the Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

§61.15 Assumption of Liabilities under all Outstanding Flood Insurance Policies issued by the National Flood Insurers Association.

On January 1, 1978, all Standard Flood Insurance Policies issued by the National Flood Insurers Association prior to January 1, 1978, which have their annual policy period extending into the calendar year 1978, shall be considered to be Standard Flood Insurance Policies issued by the Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472.

APPENDIX A (1)

FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

(Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof)

DWELLING FORM

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations form made a part hereof and subject to all the terms of this policy, the insurer does insure the Insured and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY "FLOOD" as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto, or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flood, but not elsewhere.

Assignment of this policy by the Insured is allowed. The Insurer under this Policy is the Federal Emergency Management Agency.

DEFINITION OF "FLOOD"

Wherever in this policy the term "flood" occurs, it shall be held to mean: A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslide (i.e., mudflow), a river or flow of liquid mud approximately caused by flooding as defined in subparagraph A-2

above or by the accumulation of water under the ground.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the anticipated cyclical levels.

PERILS EXCLUDED

The Insurer shall not be liable for loss:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water, except where the property covered has been simultaneously damaged by flood; (3) water, moisture or mudslide (i.e., mudflow) damage of any kind resulting primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties immediately adjacent thereto; or (4) seepage, backup of water, or hydrostatic pressure not related to a condition of "flood" as defined;

B. Caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By the theft or by fire, windstorm explosion, earthquake, landslide or any other earth movement except such mudslide or erosion as is covered under the peril of flood;

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by the peril insured against;

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save and preserve the property at

the time of and after an occurrence of the peril insured against by this policy; but for contents covered herein and subject to the terms of the policy including the limits of liability, the Insurer will reimburse the Insured for reasonable expenses necessarily incurred by him in complying with the requirements of this paragraph, including but not limited to, reasonable expenses for removal or temporary storage (not exceeding 45 days), or both, of insured contents, from the described premises because of the imminent danger of flood.

PROPERTY COVERED

A. Dwelling.—The term "dwelling" shall mean a residential building designed for the occupancy of from 1 to 4 families and occupied principally for dwelling purposes by the number of families stated herein.

When the insurance under this policy covers a dwelling, such insurance shall include additions in contact therewith; also, if the property of the owner of the described dwelling and when not otherwise covered, building equipment, fixtures and outdoor equipment, all pertaining to the service of the described premises and while within an enclosed structure located on the described premises; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction, alteration or repair of such dwelling or appurtenant private structures on the described premises.

The Insured may apply up to 10% of the amount of insurance applicable to the dwelling covered under this policy, not as an additional amount of insurance, to cover loss to appurtenant private structures (other than the described dwelling and additions in contact therewith) located on the described premises. This extension of coverage shall not apply to structures (other than structures used exclusively for private garage purposes) which are rented or leased in whole or in part, or held for such rental or lease, to other than a tenant of the described dwelling of which are used in whole or in part for commercial manufacturing of farming purposes.

B. Contents.—When the insurance under this policy covers contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a dwelling—except other property not covered under the provisions of this policy, and any property more specifically covered in whole or in part by other insurance including the peril insured against in this policy, belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the option of the Insured, belonging to a servant or guest of the Insured; all while within an enclosed structure located on the described premises.

The Insured may apply up to 10% of the amount of insurance applicable to the contents covered under this policy not as an additional amount of insurance as follows:

(a) If not owner of the described premises, to cover loss to improvements, alterations, and additions to the described dwell-

ing appurtenant enclosed private structures as described above.

(b) If an individual condominium unit owner of the described premises, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a condominium association policy on the described dwelling and appurtenant enclosed private structures as described above.

The Insurer shall not be liable for loss in any one occurrence for more than:

1. \$500.00 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glass or bric-a-brac);

2. \$500.00 in the aggregate on jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver or platinum and furs or any article containing fur which represents its principal value.

C. Debris Removal.—This insurance covers expense incurred in the removal of debris of or on the dwelling, appurtenant enclosed private structures or contents covered hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

PROPERTY NOT COVERED

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, securities, bullion, manuscripts or other valuable papers or records, numismatic or philatelic property.

B. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open.

C. Land values; lawn, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure.

D. Animals, birds, fish; aircraft and motor vehicles (other than motorized equipment pertaining to the services of the premises and not licensed for highway use) including their parts and equipment; trailers on wheels; watercraft including their furnishings and equipment; and business property.

DEDUCTIBLES

A. With respect to loss to the dwelling, appurtenant private structures, and debris removal covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of \$200.00.

B. With respect to loss to contents or debris removal covered hereunder, or to expenses, incurred under paragraph F of "Perils Excluded," the Insurer shall be liable

for only that portion of the loss in any one occurrence which is in excess of \$200.00.

REPLACEMENT COST PROVISIONS

These provisions shall apply only to a Single Family Dwelling covered hereunder. Outdoor radio and television antennas and aerials, carpeting, awnings, domestic appliances and outdoor equipment, all whether attached to the building structure or not, are excluded from the replacement cost coverage.

A. If at the time of loss the total amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, or is the maximum amount of insurance available under the National Flood Insurance Program, the coverage of this policy applicable to such dwelling is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to said dwelling is less than 80% of the full replacement cost of such dwelling and less than the maximum amount of insurance available under the National Flood Insurance Program, the Insurer's liability for loss under this policy shall not exceed the larger of the following amounts:

1. The actual cash value (meaning replacement cost less depreciation) of that part of the dwelling damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling damaged or destroyed, which the total amount of insurance applicable to said dwelling bears to 80% of the full replacement cost of such dwelling.

If 80% of the full replacement cost of such dwelling is greater than the maximum amount of insurance available under the National Flood Insurance Program, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. The Insurer's liability for loss under this policy shall not exceed the smallest of the following amounts:

1. The limit of liability of this policy applicable to the damaged or destroyed building.

2. The replacement cost of the dwelling or any part thereof identical with such dwelling on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said dwelling or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than \$1,000 or more than 5% of the whole amount of insurance applicable to said dwelling, the Insurer shall not be liable for any loss under paragraph A or subparagraph B-2 of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such

dwelling, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. The Named Insured may elect to disregard this condition in making claim hereunder, but such election shall not prejudice the Named Insured's right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

GENERAL CONDITIONS AND PROVISIONS

A. *Pair and Set Clause.*—If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud.*—This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

C. *Other Insurance.*—The Insurer shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the Insurer upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. *Added and Waiver Provisions.*—The extent of the application of insurance under this policy and of the contribution to be made by the Insurer in case of loss, and any

other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Insurer relating to appraisal or to any examination provided for herein.

E. *Cancellation of Policy or Reduction in Amount of Insurance.*—This policy may be cancelled at any time at the request of the Insured, in which case the Insurer shall, upon demand and surrender of this policy, refund the excess of paid premiums above the customary short rates for the expired time; provided, however, that the premium paid for the then current policy term shall be fully earned if the Insured retains an interest in the property covered at the location described in the application and declarations form.

The amount of insurance under this policy may be reduced at any time at the request of the Insured, in which case the Insurer shall, upon demand, refund the excess of paid premiums above the customary short rates for the expired time for the amount of the reduction; provided, however, that the premium paid for the then current policy term shall be fully earned to the extent that the Insured retains an interest in the property covered at the location described in the application and declarations form.

This policy may be cancelled by the Insurer for non-payment of the premium by giving to the Insured a 20-days' written notice of cancellation.

F. *Conditions Suspending or Restricting Insurance.*—Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the Insured), when such act or neglect is not within the control of the Insured.

G. *Alterations and Repairs.*—Permission is granted to make alterations, additions and repairs, and to complete structures in course of construction. In the event of loss hereunder, the Insured is permitted to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by the peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

H. *Property of Others.*—Unless otherwise provided in writing added hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insurer. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

I. *Liberalization Clause.*—If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Insurer there be adopted under the National Flood Insurance Act of 1968, or any acts amendatory thereof, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

J. *Statutory Provisions.*—Any terms of this policy which are in conflict with the statutes of the state wherein the property is located are hereby amended to conform to such statutes, except that in cases of conflict with applicable Federal law or regulation, such Federal law or regulation shall control the terms of the policy.

K. *Loss Clause.*—Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy).*—Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgagees upon the property described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagee or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and unless permitted by this policy, it shall be noted thereon and the mortgagee (or

trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

M. Mortgagee Obligations.—If the Insured fails to render proof of loss, the named mortgagee (or trustee) upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

N. Requirements in Case of Loss.—The Insured shall give written notice, as soon as practicable to the Insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Insurer, the Insured shall render to the Insurer, a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Insurer, may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Insurer all that remains of any property herein described, and submit to examinations under oath by any person named by the Insurer, and subscribe the

same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurer or its representative, and shall permit extracts and copies thereof to be made.

O. Appraisal.—In case the Insured and the Insurer shall fail to agree as to the actual cash value or the amount of loss, then on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss of each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

P. Options.—It shall be optional with the Insurer to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

Q. Abandonment.—There shall be no abandonment to the Insurer of any property.

R. When Loss Payable.—The amount of loss for which the Insurer may be liable shall be payable 60 days after proof of loss, as herein provided, is received by the Insurer and ascertainment of the loss is made either by agreement between the Insured and the Insurer expressed in writing or by the filing with the Insurer of an award as herein provided.

S. Action Against the Insurer.—No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer may be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

T. Subrogation.—In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's right of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to preju-

dice such right; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the described property.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized representative of the Insurer.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

APPENDIX A (2)

FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

[Issued Pursuant to the National Flood Insurance Acts of 1968, or Any Act Amendatory Thereof]

GENERAL PROPERTY FORM

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations form made a part hereof and subject to all the terms of this policy, the Insurer does insure the Insured and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss. Without allowance for any increased cost of repair or reconstruction by reason of only ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all direct loss by "flood" as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flood", but not elsewhere.

Assignment of this policy by the Insured is allowed. The Insurer under this Policy is the Federal Emergency Management Agency.

DEFINITION OF "FLOOD"

Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslide (i.e., mudflow), a river or flow of liquid mud proximately caused by flooding as defined in subparagraph A-2 above or by the accumulation of water under the ground.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the anticipated cyclical levels.

PERILS EXCLUDED

The Insurer shall not be liable for loss:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water except where the property covered has been simultaneously damaged by flood; (3) water moisture or mudslide (i.e., mudflow) damage of any kind resulting primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties immediately adjacent thereto or; (4) seepage backup of water, or hydrostatic pressure not related to a condition of "flood" as defined;

B. Caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government power authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By theft or by fire windstorm explosion earthquake landslide or any other earth movement except such mudslide or erosion as is covered under the peril of flood;

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located caused by the peril insured against.

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save and preserve the property at the time of and after an occurrence of the peril insured against by this policy; but for contents covered herein and subject to the terms of the policy including the limits of liability, the Insurer will reimburse the In-

sured for reasonable expenses necessarily incurred by him in complying with the requirements of this paragraph including but not limited to reasonable expenses for removal or temporary storage (not exceeding 45 days), or both of insured contents, from the described premises because of the imminent danger of flood.

PROPERTY COVERED

A. *Building.*—When the insurance under this policy covers a building, such insurance shall include additions and extensions attached thereto; permanent fixtures, machinery and equipment forming a part of and pertaining to the service of the building; personal property of the insured as landlord used for the maintenance or service of the building including fire extinguishing apparatus, floor coverings, refrigerating and ventilating equipment, all while within the described building; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction, alteration or repair of such building or appurtenant private structures on the described premises.

When the insurance under this policy covers a building used for residential purposes, the insured may apply up to 10% of the amount of insurance, applicable to such building, not as an additional amount of insurance, to cover loss to appurtenant private structures (other than the described building and additions and extensions attached thereto) located on the described premises. This extension of coverage shall not apply to structures (Other than structures used exclusively for private garage purposes) which are rented or leased in whole or in part, or held for such rental or lease, to other than a tenant of the described building, or which are used in whole or in part for commercial, manufacturing or farming purposes.

B. *Contents.*—When the insurance under this policy covers contents, coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this policy covers other than household contents, such insurance shall cover merchandise and stock, materials and stock supplies of every description; furniture, fixtures, machinery and equipment of every description all owned by the insured; improvements and betterments (as hereinafter defined) to the building if the insured is not the owner of the building and when not otherwise covered; all while within the described inclosed building.

2. When the insurance under this policy covers household contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a residence—except animals, birds, fish, business property, other property not covered under the provisions of this policy, and any property more specifically covered in whole or in part by the other insurance including the peril insured against in this policy; belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the option of the Insured,

belonging to a servant or guest of the Insured; all while within the described building.

The Insured, if not the owner of the described building, may apply up to 10% of the amount of insurance applicable to the household contents covered under this item, not as an additional amount of insurance, to cover loss to improvements and betterments (as hereinafter defined) to the described building.

The Insured, if an individual condominium unit owner in the described building, may apply up to 10% of the amount of insurance on contents covered under this policy, not as an additional amount of insurance, to cover loss to the interior walls floors and ceilings that are not otherwise covered under a condominium association policy on the described building.

The Insurer shall not be liable for loss in any one occurrence for more than:

(a) \$500,000 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glass or bric-a-brac);

(b) \$500,000 in the aggregate on jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver or platinum and furs or any article containing fur which represents its principal value.

3. When the insurance under this policy covers improvements and betterments, such insurance shall cover the Insured's used interest in improvements and betterments to the described building.

(a) The term "improvements and betterments" wherever used in this policy is defined as fixtures, alterations, installations, or additions comprising a part of the described building and made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, but which are not legally subject to removal by the Insured.

(b) The word "lease" wherever used in this policy shall mean the lease or rental agreement, whether written or oral, in effect as of the time of loss.

(c) In the event improvements and betterments are damaged or destroyed during the term of this policy by the peril insured against, the liability of the Insurer shall be determined as follows:

(1) If repaired or replaced at the expense of the Insured within a reasonable time after such loss, the actual cash value of the damaged or destroyed improvements and betterments.

(2) If not repaired or replaced within a reasonable time after such loss, that proportion of the original cost at time of installation of the damaged or destroyed improvements and betterments which the unexpired term of the lease at the time of loss bears to the period(a) from the date(a) such improvements and betterments were made to the expiration date of the lease.

(3) If repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

C. *Debris Removal.*—This insurance covers expense incurred in the removal of debris

of or on the building or contents covered hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

PROPERTY NOT COVERED

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, numismatic or philatelic property.

B. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open.

C. Land values; lawn, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure.

D. Automobiles; any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the Insured; watercraft or aircraft.

E. Contents specifically covered by other insurance except for the excess of value of such property above the amount of such insurance.

DEDUCTIBLES

A. With respect to loss to the building, appurtenant private structures, and debris removal covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of \$200.00.

B. With respect to loss to contents or debris removal covered hereunder, or to expenses, incurred under paragraph F of "Perils Excluded," the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of \$200.00.

GENERAL CONDITIONS AND PROVISIONS

A. *Pair and Set Clause.*—If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud.*—This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

C. *Other Insurance.*—The Insured shall not be liable for a greater proportion of any loss, less the amount of deductible, from the

peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the insurer upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. *Added and Waiver Provision.*—The extent of the application of insurance under this policy and of the contribution to be made by the Insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Insurer relating to appraisal or to any examination provided for herein.

E. *Cancellation of Policy or Reduction in Amount of Insurance.*—This policy may be cancelled at any time at the request of the Insured, in which case the Insurer shall, upon demand and surrender of this policy, refund the excess of paid premiums above the customary short rates for the expired time; provided, however, that the premium paid for the then current policy term shall be fully earned if the Insured retains an interest in the property covered at the location described in the application and declarations form.

The amount of insurance under this policy may be reduced at any time at the request of the Insured, in which case the Insurer shall, upon demand, refund the excess of paid premiums above the customary short rates for the expired time for the amount of the reduction; provided, however, that the premium paid for the then current policy term shall be fully earned to the extent that the Insured retains an interest in the property covered at the location de-

scribed in the application and declarations form.

This policy may be cancelled by the Insurer for non-payment of the premium by giving to the Insured a 20-days' written notice of cancellation.

F. *Conditions Suspending or Restricting Insurance.*—Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the insured), when such act or neglect is not within the control of the Insured.

G. *Alterations and Repairs.*—Permission is granted to make alterations, additions and repairs, and to complete structures in course of construction. In the event of loss hereunder, the Insured is permitted to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by the peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

H. *Property of Others (Servants and Guests Only).*—Unless otherwise provided in writing added hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insurer. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

I. *Liberalization Clause.*—If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Insurer there be adopted under the National Flood Insurance Act of 1968, or any acts amendatory thereof any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

J. *Statutory Provisions.*—Any terms of this policy which are in conflict with the statutes of the state wherein the property is located are hereby amended to conform to such statutes, except that in cases of conflict with applicable Federal law or regulations, such Federal law or regulation shall control the terms of this policy.

K. *Loss Clause.*—Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out

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of a separate occurrence of the peril insured against hereunder provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. Mortgage Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy).—Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

M. Mortgagee Obligations.—If the Insurer fails to render proof of loss, the named mortgagee (or trustee), upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

N. Loss Payable Clause (Applicable to contents items only).—Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. Requirements in Case of Loss.—The Insured shall give written notice, as soon as practicable, to the Insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Insurer, the Insured shall render to the Insurer, a proof of loss, signed and sworn to by the Insured stating the knowledge and belief of the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Insurer, may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Insurer all that remains of any property herein described, and submit to examinations under oath by any person named by the Insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurer or its representative, and shall permit extracts and copies thereof to be made.

P. Appraisal.—In case the Insured and the Insurer shall fail to agree as to the actual cash value of the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Q. Options.—It shall be optional with the Insurer to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

R. Abandonment.—There shall be no abandonment to the Insurer of any property.

S. When Loss Payable.—The amount of loss for which the Insurer may be liable shall be payable 60 days after proof of loss, as herein provided, is received by the Insurer and ascertainment of the loss is made either by agreement between the Insured and the Insurer expressed in writing or by the filing with the Insurer of an award as herein provided.

T. Action Against the Insurer.—No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer may be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. Subrogation.—In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's right of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such right; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the described property.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized representative of the Insurer.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

Endorsement 1

CONDOMINIUM ASSOCIATION ENDORSEMENT

If the named Insured on this policy is a condominium association, then at the time of loss by flood the following terms, subject to all other provisions of the policy, will apply:

1. The building coverage of this policy, subject to the stated limits will cover damage to all building items covered under the policy and owned in common by the condominium association members.

2. The building coverage of this policy, subject to the stated limits, is extended to cover damage to all structural items within

the Individual Condominium Units, including walls, floors, ceilings, and their related coverings, such as paint, paper, panelling, carpeting, and tile. Also covered are installed appliances for heating, cooling, plumbing and electrical purposes. The structural items may be original installations or replacement or additional items.

3. The building coverage outlined in paragraph 2 above has application only to the extent that the policy's stated limits have not been exhausted under paragraph 1.

4. The policy deductible relating to the building coverage shall be applied against the total damage to all of the building's structural elements and not against the covered loss, and shall not be applied separately in the case of each unit sustaining damage.

5. The contents coverage of this policy covers damage, subject to the stated limits, to all contents items owned in common by the association members and contained in the insured building or removed therefrom in accordance with the policy's terms.

6. The policy deductible relating to contents coverage shall be applied against the total damage to all contents owned in common by the condominium association members and contained in the insured building or removed therefrom in accordance with the policy's terms and not against the covered loss.

7. Loss under this endorsement shall be adjusted with the condominium association and shall be payable to the insurance trustee of record, as designated by the association.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), as amended (42 U.S.C. 4001-4128))

[43 FR 2570, Jan. 17, 1978, as amended at 44 FR 32215, June 5, 1979. Redesignated at 44 FR 31177, May 31, 1979]

Source: 43 FR 2573, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Issuance of Policies

§62.1 Purpose of part.

The purpose of this Part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under Part 64 of this subchapter, and to prescribe the general method by which the Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

§62.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§62.3 Servicing Agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Administrator has entered into the Agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) The following company has been contracted to act as a servicing agent for the Federal Insurance Administration:

EDS Federal Corp., 6410 Rockledge Drive, Bethesda, Md. 20034.

(c) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under Parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

(d) Applications and premiums should be mailed to:

National Flood Insurance Program, Federal Insurance Administration, Federal Emergency Management Agency, P.O. Box 2448, Arlington, Va. 22202.

§62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in §61.6 of this subchapter, in any area the Administrator designates in Part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this Part, the Agreement, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded

from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this Part should be referred to the Administrator.

§62.5 Premium refund.

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under Part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted.

§62.6 Minimum commissions.

The earned commission which shall be paid to any property or casualty insurance agent licensed in the state in which the insured property is located with respect to each policy or renewal he duly procures for an eligible purchaser shall not be less than \$10. Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission, and no agent shall be required to return that earned commission.

§62.7 Notice to policyholders.

Pursuant to the National Flood Insurance Program (42 U.S.C. 4001-4128) the servicing agent shall provide a notice in all flood insurance policies issued and renewed containing the following information:

(a) The policy indicated on the reverse side will expire 12 p.m. on the day prior to the renewal date shown. Your policy, when renewed, will be issued by the Federal Government, as insurer, rather than by the National Flood Insurers Association, whose contractual relationship with the Department of Housing and Urban Development terminated on December 31, 1977.

(b) To avoid a lapse in coverage your renewal premium for the next annual term must be received prior to the expiration of the current policy term. If you elect the increased amount of insurance shown in B, your renewal premium must be received 15 days prior to the current term expiration date in order for the increased amounts of insurance to take effect on the renewal effective date shown.

(c) If this policy is allowed to expire, the mortgagee of the insured property, if any, will be provided written notice as is provided for under the policy conditions.

(d) If you have any questions, contact

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A—Issuance of Policies

Sec.

- 62.1 Purpose of part.
- 62.2 Definitions.
- 62.3 Servicing Agent.
- 62.4 Limitations on sale of policies.
- 62.5 Premium refund.
- 62.6 Minimum commissions.
- 62.7 Notice to policyholders.

Subpart B—Claims Adjustment and Judicial Review

- 62.21 Claims adjustment.
- 62.22 Judicial review.

Authority: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575 (42 U.S.C. 4013); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

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your local agent. If you are unable to contact the agent, refer questions to the nearest National Flood Insurance Servicing Center.

Subpart B—Claims Adjustment and Judicial Review

§62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and Parts 61 and 62 of this subchapter.

§62.22 Judicial Review.

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4053, institute an action on such claim against the Director of the Federal Emergency Management Agency in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate United States Attorney, the Attorney General of the United States, and the Director of the Federal Emergency Management Agency.

PART 63—[RESERVED]

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

See.

- 64.1 Purpose of part.
- 64.2 Definitions.
- 64.3 Flood Insurance Maps.
- 64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.
- 64.5 Relationship of rates to zone designations.
- 64.6 List of eligible communities.

Authority: Sec. 7(b), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order

12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

Source: 41 FR 46986, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§64.1 Purpose of Part.

(a) 42 U.S.C. 4012(c), 4022, and 4102 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Administrator has: (1) Identified the areas of special flood, mudslide (i.e., mudflow) or flood-related erosion hazards within the community under Part 65 of this subchapter; and/or (2) completed a risk study for the applicant community. A period of 15 years ending July 31, 1983, was allotted for this purpose. The priorities for conducting such risk studies are set forth in §§ 59.23 and 60.25 of this subchapter. A purpose of this Part is periodically to list those communities in which the sale of insurance under the regular program has been authorized.

(b) 42 U.S.C. 4056 authorizes an emergency implementation of the National Flood Insurance Program whereby, for a period ending on September 30, 1978, the Administrator may make subsidized coverage available to eligible communities prior to the completion of detailed risk studies for such areas. This Part also describes procedures under the emergency program and lists communities which become eligible under that program.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46986, Oct. 26, 1976, as amended at 43 FR 7141, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§64.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§64.3 Flood Insurance Maps.

(a) The following maps may be prepared by the Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. It indicates the risk premium rate zones applicable in the community and when those rates are effective. The symbols used to designate those zones are as follows:

Zone symbol:

A. Area of special flood hazard without water surface elevations determined.

Zone symbol:

A1-99 Area of special flood hazard with water surface elevations determined.

A0 Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft.

VI-30 Area of special flood hazards, with velocity, that is inundated by tidal floods (coastal high hazard area).

V0 Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. and with velocity.

B. Area of moderate flood hazards.

C. Area of minimal hazards.

D. Area of undetermined but possible, flood hazards.

M Area of special mudslide (i.e., mudflow) hazards.

N. Area of moderate mudslide (i.e., mudflow) hazards.

P. Area of undetermined, but possible, mudslide hazards.

E. Area of special flood-related erosion hazards.

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) will be designated by use of the proper symbols in combination.

(2) Flood Hazard Boundary Map (FHBMs). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1-99, A0, V1-30, V0, M, and E.

(c) The FHBMs or FIRMs shall be maintained for public inspection at the following locations:

(1) The Information Office of the State agency or agencies designated by statute or the respective Governors to cooperate with the Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood-prone pursuant to Part 65 of this subchapter;

(2) One or more official locations within the community in which flood insurance is offered, which shall be specified in Part 65 of this subchapter at the time identification of the community as flood-prone is announced by publication in the Federal Register;

(3) The NFIA servicing company for the State or area (additional copies may be obtained from the appropriate servicing company) (See § 62.7);

(4) The official record copy of each official map shall be maintained in FIA files in Washington, D.C.

§64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an

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your local agent. If you are unable to contact the agent, refer questions to the nearest National Flood Insurance Servicing Center.

Subpart B—Claims Adjustment and Judicial Review

§62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and Parts 61 and 62 of this subchapter.

§62.22 Judicial Review.

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4053, institute an action on such claim against the Director of the Federal Emergency Management Agency in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate United States Attorney, the Attorney General of the United States, and the Director of the Federal Emergency Management Agency.

PART 63—[RESERVED]

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Sec.

- 64.1 Purpose of part.
- 64.2 Definitions.
- 64.3 Flood Insurance Maps.
- 64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.
- 64.5 Relationship of rates to zone designations.
- 64.6 List of eligible communities.

Authority: Sec. 7(b), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order

12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

Source: 41 FR 46986, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§64.1 Purpose of Part.

(a) 42 U.S.C. 4012(c), 4022, and 4102 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Administrator has: (1) Identified the areas of special flood, mudslide (i.e., mudflow) or flood-related erosion hazards within the community under Part 65 of this subchapter; and/or (2) completed a risk study for the applicant community. A period of 15 years ending July 31, 1983, was allotted for this purpose. The priorities for conducting such risk studies are set forth in §§59.23 and 60.25 of this subchapter. A purpose of this Part is periodically to list those communities in which the sale of insurance under the regular program has been authorized.

(b) 42 U.S.C. 4056 authorizes an emergency implementation of the National Flood Insurance Program whereby, for a period ending on September 30, 1978, the Administrator may make subsidized coverage available to eligible communities prior to the completion of detailed risk studies for such areas. This Part also describes procedures under the emergency program and lists communities which become eligible under that program.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46986, Oct. 26, 1976, as amended at 43 FR 7141, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§64.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§64.3 Flood Insurance Maps.

(a) The following maps may be prepared by the Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. It indicates the risk premium rate zones applicable in the community and when those rates are effective. The symbols used to designate those zones are as follows:

Zone symbol:

A. Area of special flood hazard without water surface elevations determined.

Zone symbol:

A1-99 Area of special flood hazard with water surface elevations determined.

A0 Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft.

VI-30 Area of special flood hazards, with velocity, that is inundated by tidal floods (coastal high hazard area).

VO Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. and with velocity.

B. Area of moderate flood hazards.

C. Area of minimal hazards.

D. Area of undetermined but possible, flood hazards.

M Area of special mudslide (i.e., mudflow) hazards.

N. Area of moderate mudslide (i.e., mudflow) hazards.

P. Area of undetermined, but possible, mudslide hazards.

E. Area of special flood-related erosion hazards.

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) will be designated by use of the proper symbols in combination.

(2) Flood Hazard Boundary Map (FHBM). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBM or FIRM is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1-99, A0, V1-30, VO, M, and E.

(c) The FHBM or FIRM shall be maintained for public inspection at the following locations:

(1) The Information Office of the State agency or agencies designated by statute or the respective Governors to cooperate with the Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood-prone pursuant to Part 65 of this subchapter;

(2) One or more official locations within the community in which flood insurance is offered, which shall be specified in Part 65 of this subchapter at the time identification of the community as flood-prone is announced by publication in the Federal Register;

(3) The NFIA servicing company for the State or area (additional copies may be obtained from the appropriate servicing company) (See § 62.7);

(4) The official record copy of each official map shall be maintained in FIA files in Washington, D.C.

§64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an

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scheduled to have in effect, a FIRM, thereby usually providing water surface elevations for all or portions of Zones A and V.

(b) The effective date of the most recent revision of the FIRM for the communities listed are entered as follows (which will not appear in the Code of Federal Regulations except for the page number at this entry in the Federal Register).

[42 FR 9110, Feb. 14, 1977. Redesignated at 44 FR 31177, May 31, 1979]

Note.—For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§65.5 Requirement to submit new technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. Within six months of the date that such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this paragraph. Such submission is necessary so that upon confirmation of those physical changes affecting flooding conditions risk premium rates and flood plain management requirements will be based upon current data.

(a) The Chief Executive Officer (CEO) of a community participating in the Program shall submit to the Administrator technical or scientific information indicating that the base flood elevations on the community's FIRM do not accurately reflect flood risks as they currently exist. Such information shall include, but not necessarily be limited to:

(1) A topographic map exhibiting ground elevation contours in greater detail than maps available at the time of the flood insurance study, or exhibiting topographic or ground elevation changes since the flood insurance study was performed; and

(2) Hydrologic data which has become available since the flood insurance study was performed, such as photographs or historical records of a major flooding occurrence or a flood study or information developed by an appropriate authoritative source, such as a Federal or State agency, a County Water Control District, and a County, City or private registered professional engineer. Hydrologic information shall be of sufficient detail so that the hydrologic computations may be evaluated by the Administrator, or

(3) Information about flood control projects, such as stream channelization, construction of new dams, reservoirs, artificial canals, private levees, or flood protection systems. Such information shall:

(i) Be submitted at least six months prior to the expected completion date of the project, and

(ii) Include a complete plan of the project with cross sections and dimensions, together with a detailed map of the affected area indicating changes in base flood elevations caused by construction of the project, and

(iii) Be reflected on the community's FIRM only after the project has been com-

pleted, except as may be provided in this subchapter.

(b) The technical and scientific information indicating changes in base flood elevations shall be submitted to:

Engineering Division, Office of Flood Insurance, Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

(c) Upon receipt of the scientific or technical data, the Administrator shall (1) mail an acknowledgement to the CEO, and (2) notify the CEO within 90 days that:

(i) The base flood elevations on the effective FIRM are correct and shall not be modified; or

(ii) The flood elevations on the effective FIRM shall be modified, and new base flood elevations shall be established under the provisions of Part 67 of this subchapter; or

(iii) An additional 90 days is required to evaluate the scientific or technical data submitted.

§65.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBMs).*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 5149
40 FR 17015
40 FR 20798
40 FR 46102
40 FR 53579
40 FR 56672
41 FR 1478
41 FR 50990
41 FR 13352
41 FR 17726
42 FR 8895
42 FR 29433
42 FR 46226
42 FR 64076
43 FR 24019
44 FR 815
44 FR 6383
44 FR 18485
44 FR 25636
44 FR 34120
44 FR 52835

(b) *Flood Insurance Rate Maps (FIRM's).*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 17015
41 FR 1478
42 FR 49811
42 FR 64076
43 FR 24019
44 FR 25636
44 FR 52835

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

[44 FR 52836, Sept. 11, 1979]

Note.—For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§65.7 List of communities with minimal hazard areas.

[43 FR 24022, June 2, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Note.—For the list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§65.8 List of communities with no special flood hazard areas.

[43 FR 36241, Aug. 16, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Note.—For the list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§65.9 List of communities with minimal flood hazard areas.

[44 FR 5079, Jan. 25, 1979. Redesignated at 44 FR 31177, May 31, 1979]

Note.—For the list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

PART 66—CONSULTATION WITH LOCAL OFFICIALS

Sec.

66.1 Purpose of part.

66.2 Definitions.

66.3 Establishment of community case file and flood elevation study docket.

66.4 Appointment of consultation coordination officer.

66.5 Responsibilities of CCO.

66.6 Duties of CCO.

Authority: Sec. 205(a), 87 Stat. 983 (42 U.S.C. 4128); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 41 FR 46988, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§66.1 Purpose of part.

(a) The purpose of this Part is to comply with section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4107) by establishing procedures for flood elevation determinations of Zones A1-99 and V1-30 within the community so that adequate consultation with the community officials shall be assured.

(b) The procedures in this Part shall apply when base flood elevations are to be determined or modified.

(c) The Administrator or his delegate shall:

(1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).

(2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods employed in reaching such conclusions; and

(3) Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

§66.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§66.3 Establishment of community case file and flood elevation study docket.

(a) A file shall be established for each community at the time initial consideration is given to studying that community in order to establish whether or not it contains flood-prone areas. Thereafter, the file shall include copies of all correspondence with officials in that community. As the community is tentatively identified, provided with base flood elevations, or suspended and reinstated, documentation of such actions by the Administrator shall be placed in the community file. Even if a map is administratively rescinded or withdrawn after notice under Part 65 of this subchapter or the community successfully rebuts its flood-prone designation, the file will be maintained indefinitely.

(b) A portion of the community file shall be designated a flood elevation study consultation docket and shall be established for each community at the time the contract is awarded for a flood elevation study. The docket shall include copies of (1) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Federal Insurance Administration representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Administrator's final determination.

(c) A flood elevation determination docket shall be established and maintained in accordance with Part 67 of this subchapter.

§66.4 Appointment of consultation coordination officer.

The Administrator shall appoint an employee of the Federal Emergency Management Agency, or other designated Federal employee, as the Consultation Coordination

Officer (CCO) for each community when a contract is awarded for a Flood Elevation Study, and, in writing, shall advise the community and the appropriate state coordinating agency or official for the state in which the community is located of the designation of the CCO.

§66.5 Responsibilities of CCO.

(a) The CCO shall be responsible for arranging consultation among appropriate officials of a community in which any proposed Flood Insurance Study is undertaken, the state coordinating agency, and the organization under contract or the auspices of the Federal Insurance Administration undertaking the study.

(b) The CCO shall encourage local dissemination of surveys, studies, and investigations so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(c) The CCO shall be responsible for encouraging the submission of community information concerning the study by providing sample press releases or other materials to accomplish such purpose.

§66.6 Duties of CCO.

(a) The primary duty of a CCO is to provide consultation with appropriate officials of the community so that they may be fully informed of (1) the responsibilities placed on them by the Program, (2) the administrative procedures followed by the Federal Insurance Administration, (3) the community's role in developing the FIRM, and (4) the responsibilities of the community if it participates or continues to participate in the Program.

(b) Before the commencement of the community's proposed Flood Insurance Study, the CCO for the community in which the study is to be conducted, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend it. At this meeting, the CCO shall inform the local officials of (1) the date when the study will commence, (2) the nature and purpose of the study, (3) the areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained.

(c) After a Flood Insurance Study has commenced in any community, the CCO for that community shall serve as a liaison among the local officials, the state coordinating agency, and the organization undertaking the study in order to keep all interested parties informed as to the progress of the study.

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Sec.

67.1 Purpose of Part.

67.2 Definitions.

67.3 Establishment and maintenance of a

Sec.	flood elevation determination docket (FEDD).
67.4	Proposed flood elevation determination.
67.5	Right of appeal.
67.6	Basis of appeal.
67.7	Collection of appeal data.
67.8	Appeal procedure.
67.9	Final determination in the absence of an appeal by the community.
67.10	Rates during pendency of final determination.
67.11	Notice of final determination.
67.12	Appeal to District Court.

Authority: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4012); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 41 FR 46989, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§67.1 Purpose of Part.

The purpose of this Part is to establish procedures implementing the provisions of section 110 of Flood Disaster Protection Act of 1973.

§67.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).

The Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

(a) The name of the community subject to the flood elevation determination;

(b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;

(c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;

(d) A copy of the notice of the proposed flood elevation determination published in the Federal Register;

(e) Copies of all appeals by private persons received by the Administrator from the CEO;

(f) Copies of all comments received by the Administrator on the notice of the proposed flood elevation determination published in the Federal Register.

(g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;

(h) A copy of the flood insurance study for the community;

(i) A copy of the FIRM for the community;

(j) Copies of all materials maintained in the flood elevation study consultation docket; and

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(k) A copy of the final determination with supporting documents.

§67.4 Proposed flood elevation determination.

The Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the Federal Register;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

§67.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made pursuant to section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Administrator's proposed determination.

§67.6 Basis of appeal.

The sole basis of an appeal under this Part shall be the possession of knowledge or information indicating that the elevations proposed by the Administrator are scientifically or technically incorrect.

§67.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's proposed flood elevation determination and shall be placed in the FEDD.

§67.8 Appeal procedure.

(a) If a community appeals the proposed flood elevation determination, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his/her proposed determination is based.

(b) The Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in Part 68 of this subchapter or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under §67.12.

(e) The Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with §67.12.

§67.9 Final determination in the absence of an appeal by the community.

(a) If the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with §67.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in §67.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals.

§67.10 Rates during pendency of final determination.

(a) Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to purchase flood insurance at the subsidized rate.

(b) After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin no later than six months after the final flood elevation determination.

§67.11 Notice of final determination.

The Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the Federal Register, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

§67.12 Appeal to District Court.

(a) An appellant aggrieved by the final determination of the Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Director shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with the provisions of 5 U.S.C. 706, as modified by 42 U.S.C. 4104(b).

PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.	Purpose of Part.
68.1	Purpose of Part.
68.2	Definitions.
68.3	Right to administrative hearings.
68.4	Judge.
68.5	Establishment of docket.
68.6	Time and place of hearing.
68.7	Conduct of hearings.
68.8	Scope of review.
68.9	Admissible evidence.
68.10	Burden of proof.
68.11	Right of judge to obtain scientific or technical advice.
68.12	Determination.
68.13	Relief.

Authority: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4012); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 41 FR 46990, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§68.1 Purpose of Part.

The purpose of this Part is to establish procedures for appeals of the Administrator's base flood elevation determination, whether proposed pursuant to section 1363(e) of the Act (42 U.S.C. 4104) or modified because of changed conditions or the availability of additional newly acquired scientific or technical information.

§68.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§68.3 Right to administrative hearings.

An administrative hearing under this Part shall only be held if a community appeals the Administrator's flood elevation determination established pursuant to §67.8 of this subchapter, or otherwise, and the Administrator has determined that such appeal cannot be resolved by consultation with officials of the community, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

§68.4 Judge.

Each hearing shall be conducted by an Administrative Law Judge (hereinafter "Judge") certified by the Civil Service Commission or by a Hearing Officer (hereinafter "Judge") designated by the Director.

§68.5 Establishment of docket.

The General Counsel shall establish a docket for appeals referred to him by the Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the FEDD file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements, and other legal documents, a transcript of the hearing, and the judge's final determination.

§68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the judge for that hearing. He shall promptly advise the Administrator and the General Counsel of such designation.

(b) The judge's notice of the time and place of hearing shall be sent by the Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing must be sent no less than 30 days before the date of hearing unless such period is waived by all appellants.

§68.7 Conduct of hearings.

(a) The judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Administrator shall be represented by the General Counsel or his designee.

(c) One administrative hearing shall be made for any one community unless the judge for good cause shown grants a separate appeal or appeals.

(d) The CEO or his designee shall represent all appellants from that community; provided that any appellant may petition the judge to allow such appellant to make an appearance on his own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) The Administrator shall assure that a transcribed verbatim record is made of the proceeding which shall be available for inspection by any appellant. An appellant may order copies of the transcribed verbatim record directly from the reporter and shall be responsible for payments.

§68.8 Scope of review.

Review at administrative hearings shall be limited to an examination of knowledge or information presented by each appellant indicating that elevations proposed by the Administrator are scientifically or technically incorrect.

§68.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at administrative hearings. However,

only evidence relevant to issues within the scope of review under §68.8 shall be admissible.

(b) The community's FEDD file shall be admissible.

(c) Documentary and testimonial evidence shall be admissible.

(d) Admissibility of non-expert testimony shall be within the discretion of the judge.

(e) The community's statement of reasons for appealing shall be admissible.

(f) All testimony shall be under oath.

§68.10 Burden of proof.

The burden shall be on appellants to prove that the flood elevation determination is not scientifically or technically correct.

§68.11 Right of judge to obtain scientific or technical advice.

The judge may submit conflicting technical or scientific data to an independent scientific body or appropriate Federal agency for advice.

§68.12 Determination.

The judge shall make a written determination on the evidence presented at the hearing within 30 days after the conclusion of the hearing.

§68.13 Relief.

The sole relief which shall be granted under this Part is a modification of the Administrator's proposed determination by the judge in accordance with his determination under §68.12. This modification shall be binding on the Administrator.

PART 69—[RESERVED]**PART 70—PROCEDURE FOR MAP CORRECTION****Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations****Sec.**

70.1 Purpose of Part.

70.2 Definitions.

70.3 Right to submit technical information.

70.4 Review by the Administrator.

70.5 Letter of Map Amendment.

70.6 Distribution of Letter of Map Amendment.

70.7 Notice of Letter of Map Amendment.

70.8 Premium refund after Letter of Map Amendment.

Authority: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4011); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 41 FR 46991, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations**§70.1 Purpose of Part.**

The purpose of this Part is to provide an administrative procedure whereby the Federal Insurance Administrator (Administrator) will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, A0, A1-99, V0 and V1-30 Zones, as a result of the transposition of the curvilinear line to either a street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either a FHBM or FIRM. Where there has been a final base flood elevation determination, any alteration of the topography shall not be subject to this procedure. Appeals of such determinations are subject to the provisions of Part 67 of this subchapter.

§70.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, A0, A1-99, V0 and V1-30 Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for his/her review.

(b) Scientific and technical information for the purpose of this Part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest floor (including basement) of the structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resources), a County Water Control District, a County or City Engineer, a Federal Insurance Administration Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor of the type of structure and that the lowest floor (including basement) of the

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structure is above the base flood level. Where there has been a final flood elevation determination, and fill has altered the topography, such certification should include the date that the fill was placed on the property.

§ 70.4 Review by the Administrator.

The Administrator, after reviewing the scientific or technical information submitted under the provisions of § 70.3, shall notify the applicant in writing of his/her determination within 60 days from the date of receipt of the applicant's scientific or technical information that:

- (a) The property is within a designated A, A0, A1-99, V0 or V1-30 Zone, and shall set forth the basis of such determination; or
- (b) The property should not be included within a designated A, A0, A1-99, V0, or V1-30 Zone and that the FHBM or FIRM will be modified accordingly; or
- (c) An additional 60 days is required to make a determination.

§ 70.5 Letter of Map Amendment.

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of § 70.4(b), the Administrator shall issue a Letter of Map Amendment which shall state:

- (a) The name of the Community to which the map to be amended was issued;
- (b) The number of the map;
- (c) The identification of the property to be excluded from a designated A, A0, A1-99, V0 or V1-30 Zone.

§ 70.6 Distribution of Letter of Map Amendment.

(a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Administrator.

(b) A copy of the Letter of Map Amendment shall be sent to the local map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.

(c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.

(d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.

(e) A copy of the Letter of Map Amendment shall be sent to the National Flood Insurers Association.

(f) A copy of the Letter of Map Amendment will be maintained by the Federal Insurance Administration in its community case file.

§ 70.7 Notice of Letter of Map Amendment.

(a) The Administrator shall publish a notice in the Federal Register that the FIRM for a particular community has been amended by letter determination pursuant to this Part.

(b) The Administrator shall not publish a notice in the Federal Register that the

FHBM for a particular community has been amended by letter determination pursuant to this Part. The Letter of Map Amendment provided under §§ 70.5 and 70.6 serves to inform the parties affected.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1963), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))
[42 FR 56953, Oct. 31, 1977. Redesignated at 44 FR 31177, May 31, 1979]

§ 70.8 Premium refund after Letter of Map Amendment.

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this Part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in § 62.5 of this subchapter.

PARTS 71-74—[RESERVED]

PART 75—EXEMPTION OF STATE OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

Subpart A—General

Sec.

- 75.1 Purpose of Part.
- 75.2 Definitions.
- 75.3 Burden of proof.

Subpart B—Standards for Exemption

75.10 Applicability.

75.11 Standards.

75.12 Application by a State for exemption.

75.13 Review by the Administrator.

75.14 States exempt under this Part.

Authority: Sec. 7(d), 79 Stat. 670 7(d); 42 U.S.C. 3535(d); and 42 U.S.C. 4128; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 41 FR 46991, Oct. 26 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 75.1 Purpose of Part.

The purpose of this Part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identi-

fied by the Administrator as A, A0, M, V, V0, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

§ 75.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§ 75.3 Burden of proof.

In any application made by a State to the Administrator for certification of its self-insurance plan, the burden of proof shall rest upon the State making application to establish that its policy of self-insurance is adequate and equals or exceeds the standards provided in this Part.

Subpart B—Standards for Exemption

§ 75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, A0, M, V, V0 and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

§ 75.11 Standards.

(a) In order to be exempt under this Part, the State's self insurance plan shall, as a minimum:

(1) Constitute a formal policy or plan of self-insurance created by statute or regulation authorized pursuant to statute.

(2) Specify that the hazards covered by the self-insurance plan expressly include the flood and flood-related hazards which are covered under the Standard Flood Insurance Policy.

(3) Provide coverage to state-owned structures and their contents equal to that which would otherwise be available under a Standard Flood Insurance Policy.

(4) Consist of a self-insurance fund and/or a commercial policy of insurance or reinsurance for which provision is made in statute or regulation and which is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, A0, M, V, V0, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate

by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage which would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Administrator as A, A0, M, V, V0, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, A0, M, V, V0, and E Zones. The inventory shall: (i) Include the location of individual structures; (ii) include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and (iii) include an estimate of the anticipated annual loss due to flood damage.

(6) Provide the flood loss experience for State-owned structures and their contents based upon incurred losses for a period of not less than the 5 years immediately preceding application for exemption, and certify that such historical information shall be maintained and updated.

(7) Include, pursuant to §60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth

standards for State-owned properties within A, A0, M, V, V0, and E Zones.

(b) The Administrator shall determine the adequacy of the insurance provisions whether they be based on available funds, an enforceable commitment of funds, commercial insurance, or some combination thereof, but has discretion to waive specific requirements under this Part.

§75.12 Application by a State for exemption.

Application for exemption made pursuant to this Part shall be made by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in §75.11.

§75.13 Review by the Administrator.

(a) The Administrator may return the application for exemption upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the self-insurance plan.

(b) Upon determining that the State's plan of self-insurance is inadequate, the Administrator shall in writing reject the application for exemption and shall state in what respects the plan fails to comply with the standards set forth in §75.11 of this subpart.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in §75.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the

Administrator as A, A0, M, V, V0, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this Part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

(d) Documentation which cannot reasonably be provided at the time of application for exemption shall be submitted within six months of the application date. The Administrator may revoke his certification for a State's failure to submit adequate documentation after the six month period.

§75.14 States exempt under this Part.

The following States have submitted applications and adequate supporting documentation and have been determined by the Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Maine, Georgia, Oregon, and Florida.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[43 FR 7141, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Montana Code Annotated

Montana Floodplain and Floodway Management Act

Part I

General Provisions

76-5-101. Findings. The people of the state of Montana find that: (1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and (2) the public interest necessitates management and regulation of floodprone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

- (a) guide development of the floodway areas of this state consistent with the enumerated findings;
- (b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;
- (c) provide state coordination and technical assistance to local units in management of floodway areas;
- (d) coordinate federal, state, and local management activities for floodway areas;
- (e) encourage local governmental units to manage floodprone lands, including the adoption, enforcement, and administration of land use regulations; and
- (f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

- (a) restrict or prohibit uses which are dangerous to health or safety or property in times of flood or cause increased flood heights or velocities;
- (b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
- (c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;
- (d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;
- (e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board.

(6) "Designated floodway" means a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(8) "Establish" means construct, place, insert, or excavate.

(9) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

(10) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude which has a 1% chance of occurring in any given year.

(11) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

(12) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(13) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(15) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(16) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(17) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks; provided that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

76-5-104. Presumption that depression is watercourse. In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

76-5-105. Authority to enter and investigate lands or waters. The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision.

76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the board.

76-5-107. Federal supremacy. Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

76-5-108. Permit construed as added requirement. The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

76-5-109. Other legal remedies preserved-immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) Where it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3). The use of any one of the remedies or powers given to the board or the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state, the board, a member of the board, or the department.

76-5-110. **Penalties for violation.** Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than \$100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

Part 2

Role of State Agencies

76-5-201. **Program for delineation of floodplains and floodways.**

(1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(2) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include but not be limited to the following:

- (a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;
- (b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and
- (c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

76-5-202. **Designation of floodplains and floodways.** (1) When sufficient data have been acquired, the board shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(2) These designations shall be based upon reasonable hydrological certainty.

(3) The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found.

76-5-203. Alteration of floodplains or floodways. The board may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

76-5-204. What constitutes notice. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than 10 days prior to the date set for the hearing or the effective date of the order.

76-5-205. Furnishing of material to local governments. (1) When the designated floodplain or the designated floodway has been established, the department shall furnish these data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the board, and suggested minimum standards adopted by the board.

(2) These standards and rules shall reflect graduations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the board shall consider local input from the affected political subdivisions.

76-5-206. Powers and duties of department relative to obstructions. (1) Where an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the department.

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within such reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make or cause the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

76-5-207. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in 76-5-206(1) such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in 76-5-206(1).

76-5-208. Orders and rules. (1) The board may adopt such orders and rules as are necessary to implement parts 1 through 4 of this chapter. All orders and rules adopted by the board shall be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order shall not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, where an order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing shall be mailed by the department to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined.

76-5-209. Appeal from board order. (1) A person aggrieved by any order of the board issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after its effective date. Service of notice of the appeal shall be made upon the department.

(2) If an appeal is taken, enforcement of the order shall be stayed pending the outcome of the appeal.

Part 3

Role of Local Government

76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations which meet or exceed the minimum standards of the board.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under 76-5-202 through 76-5-205, and no artificial obstruction or nonconforming use may be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the board.

(3) A political subdivision which has failed to adopt land use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations, and if approved by the board, they shall be

effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the board may shorten the 6-month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

76-5-302. Substitution of local control for state permit system.

(1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions which meet or exceed the minimum standards of the board and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required.

(2) However, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply.

Part 4

Use of Floodplains and Floodways

76-5-401. Permissible open-space uses. The following open-space uses shall be permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

- (1) agricultural uses;
- (2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;
- (3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;
- (4) forestry, including processing of forest products with portable equipment;
- (5) residential uses such as lawns, gardens, parking areas, and play areas;
- (6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

76-5-402. Permissible uses within floodplain but outside of floodway. Permits shall be granted for the following uses within that portion of the floodplain not contained within the

designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

- (1) any use permitted in the designated floodway;
- (2) structures, including but not limited to residential, commercial, and industrial structures, provided that:
 - (a) such structures meet the minimum standards adopted by the board;
 - (b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;
 - (c) commercial and industrial structures are either constructed on fill as specified in subsection (b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

- (1) a building for living purposes or place of assembly or permanent use by human beings;
- (2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;
- (3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

76-5-404. Artificial obstructions and nonconforming uses.

(1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301 (1) and (2) and not exempt under subsections (2) or (3) of this section or 76-5-401 through 76-5-403 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the board has enforced a designated floodplain or a designated floodway under 76-5-301 (1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

76-5-405. Variance for obstruction or nonconforming use.

(1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate 76-5-401 through 76-5-404. The application for the permit shall be submitted to the department or the responsible political subdivision and contain such information as the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways shall be conclusively deemed to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after such time as the board or the responsible political subdivision shall specify, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to this section and 76-5-406.

(3) An application for a permit shall be accompanied by a nonrefundable application fee of \$10 which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions it may consider advisable. In order for the permit to continue to remain in force. the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board:

(1) the danger to life and property by water which may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; and

(7) such other factors as are in harmony with the purpose of parts 1 through 4 of this chapter.



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CHAPTER 15

FLOODPLAIN MANAGEMENT ENGINEERING BUREAU

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Sub-Chapter 1

Definitions

36.15.101 DEFINITIONS In addition to the definition of terms contained in Section 76-5-103, MCA, and unless the context requires otherwise, as used in the Act and in this chapter:

(1) "Act" means Title 76, Chapter 5, MCA, as amended.

(2) "Alteration" means any change or addition to an artificial obstruction that either increases the size of the artificial obstruction or increases its potential flood hazard. Maintenance of an artificial obstruction is not an alteration. However, the repair, reconstruction, or improvement of an artificial obstruction, the cost of which equals or exceeds 50 percent of the actual cash value of the artificial obstruction either (a) before the improvement is started, or (b) if the artificial obstruction has been damaged and is being restored, before the damage occurred, is an alteration and not maintenance.

(3) "Channelization project" means the excavation and construction of an artificial channel for the purpose of diverting the entire flow of a watercourse or drainway from its established course.

(4) "Flood fringe" means that portion of a designated floodplain outside the limits of a designated floodway.

(5) "Floodplain," as defined by Section 76-5-103 (11), MCA, means "the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency."

(6) "Floodway," as defined by Section 76-5-103(12), MCA, means the "channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway."

(7) "Permit issuing authority" means the responsible political subdivision, if any, or the Department if there is no responsible political subdivision.

(8) "Responsible political subdivision" means a political subdivision that has received Board approval of its adopted land use regulations and enforcement procedures in accordance with Section 76-5-302, MCA, and ARM 36.15.201 through 36.15.204.

(9) "Riprap" means stone, rock, concrete block, or analogous material that is placed along the banks or bed of a watercourse or drainway for the purpose of alleviating erosion. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-208 and Sec. 76-5-404, MCA; NEW, Eff. 9/4/74.)

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Sub-Chapter 2

Regulation and Enforcement

36.15.201 LOCAL REGULATION AND ENFORCEMENT If a political subdivision adopts land use regulations that equal or exceed the minimum standards contained in sub-chapters 6 through 9 of these rules within the time specified and if the administrative and enforcement procedures for such regulations meet the requirements of these rules and are approved by the Board in accordance with Section 76-5-302, MCA, no permit will be required from the Department. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-302, MCA; NEW, Eff. 9/4/74; EMERG, AMD, Eff. 9/4/75.)

36.15.202 BOARD APPROVAL OF LOCAL REGULATIONS AND ENFORCEMENT (1) Copies of all regulations, resolutions, or ordinances proposed to be adopted by a political subdivision to meet the requirements of the Act and these rules and an explanation of its proposed administrative and enforcement procedures shall be sent to the Department for approval by the Board.

(2) The Department will notify the political subdivision by letter of Board approval or disapproval. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-302, MCA; NEW, Eff. 9/4/74; EMERG, AMD Eff. 9/4/75.)

36.15.203 TIME LIMIT FOR ADOPTION OF LOCAL REGULATIONS After a floodway or a floodplain has been designated by the Board, the Department shall notify the affected political subdivisions and set forth the date by which the political subdivision must adopt land use regulations in accordance with the Act and these rules. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-302, MCA; NEW, Eff. 9/4/74; EMERG, AMD, Eff. 9/4/75.)

36.15.204 LOCAL REGULATIONS - REQUIREMENTS (1) Land use regulations adopted by a local political subdivision in conformance with the Act and these rules may include zoning, building codes, and subdivision regulations adopted pursuant to other enabling statutory authority, such as Title 76, Chapters 1 and 3, Title 76, Chapter 2, Part 3, and Title 76, Chapter 2, Parts 1 and 2, MCA, as well as regulations adopted under the authority given in Sections 76-5-404 through 76-5-406, MCA.

(2) Any land use regulations and procedures adopted to comply with the Act and these rules must include the following:

(a) Permits must be required prior to the establishment of any new artificial obstruction or nonconforming use requiring a permit under the Act or these rules or for the alteration of any existing artificial obstruction;

(b) An official must be hired or appointed with the authority.

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to review permit applications and proposed uses or construction to determine compliance with the Act, these rules, and the regulations adopted by the political subdivision;

(c) Regulations governing the granting of permits must be at least as stringent as the minimum standards contained in these rules;

(d) The approval of the Department must be obtained prior to the approval by the political subdivision pursuant to ARM 36. 15.216(3) of any permit application that is in variance with the adopted regulations and these rules;

(e) Copies of all permits granted must be sent to the Department;

(f) Before the regulations are effective, all known property owners within the designated floodplain and designated floodway must be notified by mail by the political subdivision that their property is located within the designated floodplain or floodway and is subject to regulation. This notification provision shall not apply to political subdivisions that have adopted building codes requiring permits for new construction or to municipalities or counties that have received Flood Hazard Boundary Maps or Flood Insurance Rate Maps from the United States Department of Housing and Urban Development:

(g) A disclosure provision requiring all property owners in a designated floodplain or floodway to notify potential buyers or their agents that such property is located within the designated floodplain or floodway and is subject to regulation.

(3) the regulations may also include the following:

(a) requirements that existing nonconforming uses be inspected and documented to insure future compliance;

(b) the imposition of a reasonable application fee not to exceed \$25.00 for the processing of permit applications. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-302, MCA; NEW, Eff. 9/4/74; EMERG, AMD, Eff. 9/4/75.)

36.15.205 through 36.15.208 Reserved

36.15.209 DEPARTMENT REGULATION AND ENFORCEMENT

(1) If the political subdivision fails to adopt land use regulations that meet or exceed the minimum standards required by the Act and these rules within the time specified, the minimum standards set forth in the Act and these rules regulating the designated floodplain or floodway will be enforced by the Department.

(2) An application to the Department for a permit shall be made on a standard form furnished by the Department (Form 650) and shall include all applicable information listed on the form.

(3) The permit to establish or alter artificial obstructions or nonconforming uses, if approved, will be given by the Department on a standard form (Form 651). (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-301, MCA; NEW, 9/4/74.)

36.15.210 ENVIRONMENTAL IMPACT STATEMENTS (1) If in the case of a permit application to the Department, the Department is of the opinion that a proposed alteration, obstruction, or nonconforming use would have a significant impact on the environment, the Department may require the applicant to provide information necessary for the preparation of an Environmental Impact Statement, pursuant to the Montana Environmental Policy Act, Title 75, Chapter 1, MCA.

(2) If an Environmental Impact Statement is required, the Department shall so inform the applicant in writing indicating the information required for preparation of the Environmental Impact Statement by the Department.

(3) A permit application requiring an Environmental Impact Statement will be specifically approved or denied by the Department only after full compliance with the provisions of the Montana Environmental Policy Act. Normally, the period of time required for review of these permit applications will be from 60 to 120 days. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-405, MCA; NEW, Eff. 9/4/74.)

36.15.211 through 36.15.215 Reserved

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36.15.216 PERMITS - CRITERIA - TIME LIMITS (1) Permits shall be granted or denied by the permit issuing authority on the basis of whether the proposed establishment or alteration of an artificial obstruction or nonconforming use meets the requirements of the Act and the minimum standards established by the Board in these rules.

(2) Additional factors that shall be considered for every permit application are:

- (a) the danger to life and property from backwater or diverted flow caused by the obstruction;
- (b) the danger that the obstruction will be swept downstream to the injury of others;
- (c) the availability of alternative locations;
- (d) the construction or alteration of the obstruction in such manner as to lessen the danger;
- (e) the permanence of the obstruction;
- (f) The anticipated development in the foreseeable future of the area which may be affected by the obstruction; and,
- (g) such other factors as are in harmony with the purposes of the Act and these rules.

(3) The permit issuing authority may grant a permit for the establishment or alteration of an artificial obstruction or nonconforming use that is not in compliance with the minimum standards contained in these rules only if:

- (a) The proposed use would not increase flood heights or flood hazard either upstream or downstream;
- (b) Refusal of a permit would because of exceptional circumstances cause a unique or undue hardship on the applicant or community involved;
- (c) The proposed use is adequately floodproofed; and
- (d) Reasonable alternative locations outside the designated floodplain are not available.

(4) A permit application is considered to have been automatically granted 60 days after receipt of the application, unless the permit issuing authority notifies the applicant before the 60th day that the permit is denied unless ARM 36.15.801(3) or 36.15.210 apply. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-405 and 76-5-406, MCA; NEW, Eff. 9/4/74.)

36.15.217 WAIVER OF PERMIT FOR EMERGENCY REPAIR OR REPLACEMENT (1)

Emergency repair to and/or replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized and permit requirements waived if:

- (a) Upon notification and prior to the emergency repair and/or replacement, the permit issuing authority determines that an emergency condition warranting immediate action exists; and
- (b) The permit issuing authority agrees upon the nature and type of proposed emergency repair and/or replacement.

(2) Authorization to undertake emergency repair and/or replacement work may be given verbally if the permit issuing

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authority feels that a written authorization would unduly delay the emergency work. Such verbal authorization must be followed by a written authorization stating the emergency condition, the type of emergency work agreed upon, and a notation that verbal authorization had been previously given. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-405 and Sec. 76-5-406, MCA; NEW, 9/4/74.)

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Sub-Chapter 5

Floodplain and Floodway Delineations

36.15.501 FLOODPLAIN AND FLOODWAY DELINEATION - DATA USED - HYDROLOGICAL CERTAINTY (1) All floodplain delineation studies, reports, and maps used by the Department and Board to establish designated floodplains shall be based upon a flood of 100-year frequency.

(2) Each floodplain delineation study arranged by the Department will, insofar as time and funds permit, include a water surface profile showing the elevation of the flood of 100-year frequency and a suggested designated floodway.

(3) The Department will also utilize flood hazard maps and data provided by the U. S. Department of Housing and Urban Development for the Federal flood insurance program as a basis for establishing the designated floodplain and floodway. Such maps will delineate the boundaries of the flood of 100-year frequency but will not generally include flood elevations or floodway data.

(4) Designated floodplains established for areas where flood elevations and/or floodway data are lacking shall be regulated in accordance with Rule ARM 36.15.801.

(5) As required by Section 76-5-202, MCA, the designation of floodplains and floodways shall be based upon reasonable hydrological certainty.

(History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-201 and Sec. 76-5-202, MCA; NEW, Eff. 9/4/74.)

36.15.502 FLOODWAY DELINEATION (1) The delineations of a designated floodway shall be based on the channel of the watercourse or drainway and those portions of the adjoining floodplain which are reasonably required to carry the discharge of the flood of 100-year frequency without any theoretical measurable increase in flood heights.

(2) In areas having appreciable urban development on the floodplain, the outer boundary lines of the floodway may generally follow the riverward limits of development provided that:

(a) The calculated elevation of the flood of 100-year frequency would not be increased more than 0.5 of a foot as a result of the theoretical additional construction of the floodway;

(b) Floodway lines are compatible with local land use plans; and,

(c) The flood fringe does not contain appreciable areas with flood velocities greater than 3 feet per second or flood depths greater than 3 feet.

(History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-201 and Sec. 76-5-202, MCA; NEW, 9/4/74.)

36.15.503 PUBLIC INPUT ON PROPOSED DESIGNATED FLOODPLAINS OR FLOODWAYS

(1) The department shall at least 3 weeks prior to any hearing held for the purpose of establishing a designated

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floodplain or floodway furnish the affected political subdivisions maps and other data showing the proposed designated floodplain or floodway together with a letter requesting the political subdivision to furnish any pertinent data on flood hazards as required by Section 76-5-201 of the Act.

(2) The Department shall also issue news releases at least 3 weeks prior to any hearing requesting the public to submit any available data concerning flood hazard, flood elevations, or the proposed designated floodplain or floodway boundaries. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-201, MCA; NEW, Eff. 9/4/74.)

36.15.504 LOCAL GOVERNMENT ADJUSTMENTS TO PROPOSED FLOOD-WAY DELINEATION

(1) After the delineation of a suggested designated floodway by the Department and prior to the public hearing to consider the floodway delineations, the Department shall meet with local governmental and planning officials to consider possible adjustments due to local land use consideration.

(2) No adjustments in floodway width or location may be made, however, if such adjustments would theoretically increase flood heights beyond the permissible limits noted in ARM 36.15.502. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-201 and Sec. 76-5-202, MCA; NEW, 9/4/74.)

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Sub-Chapter 6

Designated Floodway Minimum Standards

36.15.601 USES ALLOWED WITHOUT PERMITS (1) In accordance with Section 76-5-401, MCA, the following open space uses shall be allowed without a permit anywhere within the designated floodway provided that they are not prohibited by any other ordinance or statute and provided that they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(a) agricultural uses;
(b) industrial-commercial uses such as loading areas, parking areas, and emergency landing strips;

(c) private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boatlaunching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails;

(d) forestry, including processing of forest products with portable equipment; and

(e) residential uses such as lawns, gardens, parking areas, and play areas.

(2) In addition to the uses specified in the preceding subsection, the following uses and their accessories do not in the judgment of the Board endanger health or safety or cause increased flood heights and shall thus be allowed without a permit in the designated floodway:

(a) irrigation and livestock supply wells provided that they are located at least 500 feet from domestic water supply wells; and

(b) fences, except permanent fences crossing channels. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401, Sec. 76-5-405, and Sec. 76-5-406, MCA; NEW, Eff. 9/4/74.)

36.15.602 USES REQUIRING PERMITS In addition to the uses allowed under ARM 36.15.601, the following nonconforming uses and artificial obstructions may be permitted within the designated floodway subject to the issuance of a permit by the permit issuing authority under the conditions set forth in this rule and ARM 36.15.603 and 36.15.604:

(1) excavation of material from pits or pools provided that:

(a) a buffer strip of undisturbed land of sufficient width to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;

(b) the excavation meets all applicable laws and regulations of other local and state agencies; and

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- (c) excavated material is stockpiled outside the designated floodway;
- (2) railroad, highway, and street stream crossings provided that the crossings are designated to offer minimal obstruction to flood flow;
- (3) limited filling for highway, street, and railroad embankments not associated with stream crossings provided that:
 - (a) reasonable alternative transportation routes outside the designated floodway are not available; and
 - (b) such floodway encroachment is located as far from the stream channel as possible;
- (4) buried or suspended utility transmission lines provided that:
 - (a) suspended utility transmission lines are designed such that the lowest point of the suspended line is at least 6 feet higher than the elevation of the flood of 100-year frequency;
 - (b) towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; and
 - (c) utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for a flood of 100-year frequency. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the final calculated figure shall be subject to approval by the permit issuing authority;
- (5) storage of materials and equipment provided that:
 - (a) the material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or,
 - (b) the material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic, or explosive materials shall not be permitted;
- (6) domestic water supply wells provided that:
 - (a) they are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;
 - (b) well casings are watertight to a distance of at least 25 feet below the ground surface;
 - (c) water supply and electrical lines have a watertight seal where the lines enter the casing;
 - (d) all pumps and electrical lines and equipment are either of the submersible type or are adequately floodproofed; and
 - (e) check valves are installed on main water lines at wells and at all building entry locations;
- (7) buried and sealed vaults for sewage disposal in recreational areas provided that they meet applicable laws and standards administered by the Department of Health and Environmental Sciences;
- (8) public or private campgrounds provided that:

(a) access roads require only limited fill and do not obstruct or divert flood waters; and,

(b) no dwellings or permanent mobile homes are allowed (camp trailers without wheels or towing vehicles or otherwise not quickly movable are considered permanent mobile homes);

(9) structures accessory to the uses permitted in this subsection such as boat docks, marinas, sheds, permanent fences crossing channels, picnic shelters and tables, and toilets provided that:

(a) the structures are not intended for human habitation;

(b) the structures will have a low flood damage potential;

(c) the structures will insofar as possible be located on ground higher than the surrounding ground and as far from the channel as possible;

(d) the structures will be constructed and placed so as to offer a minimal obstruction to flood flows;

(e) the structures will be firmly anchored to prevent flotation; and,

(f) service facilities within these structures such as electrical, heating, and plumbing facilities are floodproofed in accordance with ARM 36.15.901 through 36.15.903;

(10) all other nonconforming uses or artificial obstructions not specifically listed in this subsection or in ARM 36.15.606, not allowed under ARM 36.15.601, and not prohibited under ARM 36.15.605. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, 9/4/74.)

36.15.603 PERMITS FOR WATER DIVERSIONS (1) As provided in the Montana Water Use Act of 1973, Sections 85-2-302 and 85-2-402, MCA, all new surface water diversions and changes in place of diversion after July 1, 1973, require permits or approval respectively, from the Department. Within designated floodways, the Department shall review each proposed diversion and change in place of diversion to determine if flood flows may be affected.

(2) If it appears that a proposed diversion or change in place of diversion may significantly affect flood flows, the Department may require the applicant to provide additional information and to apply for a permit with the permit issuing authority under Title 76, Chapter 5, MCA, as amended.

(3) A permit under Title 76, Chapter 5, MCA, as amended, shall not be granted if in the judgment of the permit issuing authority:

(a) the proposed diversion will increase the upstream elevation of the 100-year flood a significant amount (0.5 of a foot or as otherwise determined by the permit issuing authority);

(b) the proposed diversion is not designed and constructed to minimize potential erosion from a flood of 100-year frequency; and,

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(c) any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a flood of 100-year frequency. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 75-5-406, MCA; NEW, 9/4/74.)

36.15.604 MINIMUM CRITERIA FOR PERMITS In addition to the requirements of ARM 36.15.602 and 36.15.603, a permit shall not be approved for a new artificial obstruction or nonconforming use under this rule if it will significantly increase the upstream elevation of the flood of 100-year frequency 0.5 of a foot or as otherwise determined by the permit issuing authority or significantly increase flood velocities. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-405, MCA; NEW, 9/4/74.)

36.15.605 PROHIBITED USES (1) In accordance with Section 76-5-403, MCA, the following artificial obstructions and nonconforming uses are prohibited within the designated floodway except as allowed by permit under ARM 36-15-602 through 36.15.604 and ARM 36.15.606:

- "(a) a building for living purposes or place of assembly or permanent use by human beings;
- (b) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;
- (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods."

(2) The following artificial obstructions and nonconforming uses are also prohibited within the designated floodway:

- (a) mobile homes without wheels or towing vehicles or otherwise not readily movable;
- (b) commercial buildings;
- (c) solid waste disposal and soil absorption sewage systems except as allowed or approved under the laws and standards administered by the Department of Health and Environmental Sciences;
- (d) storage of highly toxic, flammable, or explosive materials.

(History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-403 and 76-5-406, MCA; NEW, Eff. 9/4/74.)

36.15.606 PERMITS FOR FLOOD CONTROL WORKS (1) Since structural flood control works often significantly obstruct and affect floodway flow capacity, the following flood control measures shall be allowed within designated floodways subject to the issuance of a permit by the permit issuing authority and to the conditions set forth in this rule:

- (a) Flood control levees and floodwalls if:
 - (i) the proposed levees and floodwalls are designed and constructed to safely convey a flood of 100-year frequency;

(ii) the cumulative effect of the levees and floodwalls combined with allowable flood fringe encroachments does not increase the unobstructed elevation of a flood of 100-year frequency more than 0.5 of a foot at any point;

(b) riprap, except that which is hand placed, if:

(i) the riprap is designed to withstand a flood of 100-year frequency; and

(ii) the riprap does not increase the elevation of the 100-year frequency; and

(iii) the riprap will not increase erosion upstream, downstream, or across stream from the riprap site;

(c) channelization projects if they do not significantly increase the magnitude, velocity, or elevation of the flood of 100-year frequency downstream from such projects;

(d) dams provided that:

(i) they are designed and constructed in accordance with approved safety standards; and

(ii) they will not increase flood hazards downstream either through operational procedures or improper hydrologic design.

(2) The permit issuing authority may establish either a lower or higher permissible increase in the elevation of the flood of 100-year frequency than that established in subsection (1)(a)(ii) for individual levee projects based on the following criteria:

(a) The proposed levees and floodwalls, except those to protect agricultural land only, are constructed at least 3 feet higher than the elevation of a flood of 100-year frequency more than 9.5 of a foot at any point, and

(b) The estimated cumulative effect of other reasonably anticipated future permissible uses; and

(c) The type and amount of existing flood prone development in the affected area; (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, 9/4/74.)

Sub-Chapter 7

Flood Fringe Minimum Standards

36.15.701 ALLOWED USES (1) All uses allowed in the designated floodway without a permit under ARM 36.15.601 shall also be allowed without a permit in the flood fringe.

(2) All uses allowed in the designated floodway subject to the issuance of a permit under ARM 36.15.602 through 36.15.604 and ARM 36.15.606 shall also be allowed in the flood fringe subject to the issuance of a permit by the permit issuing authority.

(3) In addition, structures including, but not limited to residential, commercial, and industrial structures, and suitable fill shall be allowed by permit from the permit issuing authority within the flood fringe subject to the following conditions:

(a) Such structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution;

(b) Such structures or fill must be compatible with local comprehensive plans, if any;

(c) Residential structures must be constructed on suitable fill such that the lowest finish floor elevations (including basement) are 2 feet or more above the elevation of the flood of 100-year frequency. The fill shall be at an elevation no lower than the elevation of the flood of 100-year frequency and shall extend for at least 15 feet at that elevation beyond the structure in all directions. Where existing streets, utilities, or lot dimensions make strict compliance with this provision impossible, the permit issuing authority may authorize through the permit a lesser amount of fill or alternative flood proofing measures. The responsible political subdivision shall notify the Department and receive its approval prior to approving any lesser fill or alternative flood proofing for residential structures;

(d) Commercial and industrial structures must be either constructed on fill as specified in the preceding subparagraph or be adequately flood proofed up to an elevation no lower than 2 feet above the elevation of the flood of 100-year frequency;

(e) Roads, streets, highways, and rail lines shall be designed to minimize increases in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facilities shall be located 2 feet above the elevation of the flood of 100-year frequency;

(f) Public or private structures and facilities for liquid or solid waste treatment and disposal must be floodproofed to insure that no pollutants enter flood waters. These facilities must be allowed and approved under laws and standards administered by the Department of Health and Environmental Sciences prior to any approval given by the permit issuing authority; and

36.15.702

(g) Agricultural structures that have a low flood damage potential such as sheds, barns, shelters, and hay and grain storage structures must meet the requirements of ARM 36.15.602 (9). (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-402, Sec. 76-5-404 through 76-5-406, MCA; NEW, 9/4/74.)

36.15.702 FLOOD PROOFING FOR COMMERCIAL AND INDUSTRIAL STRUCTURES Flood proofing as required in ARM 36.15.701(3)(d) shall be accomplished in accordance with ARM 36.15.901 through 36.15.903 and shall further include the following:

(1) If the structure is designed to allow internal flooding of the lowest floor, use of the floor shall be limited to such uses as parking, loading areas, and storage of equipment or materials not appreciably affected by flood water. Further, the floors and walls shall be designed and constructed of materials resistant to flooding up to an elevation of 2 or more feet above the elevation of the flood of 100-year frequency; and

(2) Structures whose lowest floors are used for purposes other than parking, loading or storage of materials resistant to flooding shall be waterproofed up to an elevation no lower than 2 feet above the elevation of the flood of 100-year frequency. Waterproofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall be designed to withstand the hydrostatic pressures resulting from a flood of 100-year frequency. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-402, Sec. 76-5-404 through 76-5-406, MCA; NEW, 9/4/74.)

36.15.703 PROHIBITED USES The following artificial obstructions and nonconforming uses are prohibited within the flood fringe:

(1) solid waste disposal and soil absorption sewage systems, except as allowed or approved under laws and standards administered by the Department of Health and Environmental Sciences; and

(2) storage of highly toxic, flammable, or explosive materials. Storage of petroleum products may be allowed by permit if buried in tightly sealed and constrained containers or if stored on compacted fill at least 2 feet above the elevation of the flood of 100-year frequency. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through Sec. 76-5-406, MCA; NEW, 9/4/74.)

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Sub-Chapter 8

Designated Floodplain Only Minimum Standards

36.15.801 ALLOWED USES WHERE FLOODWAY NOT DESIGNATED OR NO FLOOD ELEVATIONS (1) For those watercourses or drainways in which there is a designated floodplain but not a designated floodway or where no flood elevations are available, all uses allowed in a designated floodway under ARM 36.15.601 without a permit shall also be allowed without a permit in such designated floodplain.

(2) All other uses within the designated floodplain shall require permits from the permit issuing authority. The following conditions insofar as each is applicable shall be attached to each permit approval:

(a) If the elevation of the flood of 100-year frequency is available, residential structures must be built on compacted fill as specified in ARM 36.15.701(3)(c). If such elevation is not available, the highest known historical flood elevation may be used to establish fill heights;

(b) If the elevation of the flood of 100-year frequency is available, commercial and industrial structures must meet the flood proofing requirements set forth in ARM 36.15.701 (3)(d) and 36.15.702. If such elevation is not available, the highest known historical flood elevation may be used to establish flood proofing heights;

(c) Proposed structures must be anchored to prevent flotation or collapse and must be located as far from stream channels as is practicable; and

(d) Sanitary sewage systems must be allowed and approved under laws and standards administered by the Department of Health and Environmental Sciences prior to any approval given under these rules.

(3) Where a proposed development within such designated floodplain may significantly increase flood velocities or depths, the permit issuing authority may require a permit applicant to furnish additional hydraulic and survey information before acting upon the permit application. This information may include, but is not limited to, any of the following:

(a) valley cross sections of the watercourse and adjoining floodplain; 19b) certification by a qualified professional engineer that floodproofing measures are reasonably adequate to protect against major flood damages; or

(c) a hydrologic study documenting probable effect on upstream or downstream property owners.

(4) Permits for such proposed developments may be modified or denied if the additional information shows that proposals would increase flood damages to other properties or would cause a threat to the health or safety of its occupants. (History:

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Sec. 76-5-208, MCA; IMP, Sec. 76-5-402, Sec. 76-5-404 through 76-5-406, MCA; NEW, 9/4/74.)

Sub-Chapter 9

Flood Proofing Requirements

36.15.901 FLOOD PROOFING REQUIREMENTS FOR ELECTRICAL SYSTEMS All electrical service materials, equipment, and installation for uses permitted with or without a permit in a designated floodplain or floodway shall conform to the following conditions:

(1) All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment must be located at least 2 feet above the elevation of the flood of 100-year frequency;

(2) Portable or movable electrical equipment may be placed below the elevation of the flood of 100-year frequency provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type;

(3) The main power service line shall have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the designated floodplain and above elevation of the flood of 100-year frequency; and

(4) All electrical wiring systems installed below the elevation of the flood of 100-year frequency shall be suitable for continuous submergence and may not contain fibrous components. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402 and Sec. 76-5-404 through 76-5-406, MCA; Eff. 9/4/74.)

36.15.902 FLOODPROOFING REQUIREMENTS FOR HEATING SYSTEMS

Heating systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:

(1) Float operated automatic control valves must be installed in supply lines to gas furnaces so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnaces are located;

(2) Manually operated gate valves that can be operated from a location above the elevation of the flood of 100-year frequency shall also be provided in gas supply lines; and

(3) Electric heating systems must be installed in accordance with ARM 36.15.902. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402 and Sec. 76-5-404 through 76-5-406, MCA; Eff. 9/4/74.)

36.15.903 FLOOD PROOFING REQUIREMENTS FOR PLUMBING SYSTEMS

Plumbing systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:

(1) Sewer lines, except those to buried and sealed vaults, must have check valves installed to prevent sewage backup into permitted structures; and

(2) All toilet stools, sinks, urinals, and drains must be

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located such that the lowest point of possible water entry is at least 2 feet above the elevation of the flood of 100-year frequency. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402 and Sec. 76-5-404 through 76-5-406, MCA; Eff. 9/4/74.)

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ADMINISTRATIVE RULES OF MONTANA

B

MODEL ORDINANCE

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(revised 5/8/81)

(Resolution/Ordinance) # _____

Intent

This (Resolution/Ordinance) is passed in order to comply with the Montana Floodplain and Floodway Management Act (Chapter 5, Title 76-M.C.A.) and to ensure compliance with the requirements for the continued participation by _____ in the National Flood Insurance Program. Land-use regulations which are hereby adopted are to be applied to all identified 100-year floodplains within _____ and are attached as Appendix A.

Statutory Authority

Adoption

This (Resolution/Ordinance) adopts the set of comprehensive land-use regulations attached as Appendix A for identified 100-year floodplains within _____. Identification of 100-year floodplains is based on

the _____ Flood Insurance Study,
dated _____. All other
(resolutions/ordinances) are hereby repealed to the extent of the
inconsistency only.

APPENDIX A

CHAPTER I

TITLE AND PURPOSE

1.01 Title

These Regulations shall be known and cited as

Floodplain Regulations.

These Regulations are in accordance with exercising the
authority of the laws of the State of Montana.

1.02 Purpose

To promote the public health, safety, and general welfare, to
minimize flood losses in areas subject to flood hazards, and
to promote wise use of the floodplain. These Regulations
have been established with the following purposes intended:

A. To guide development of the 100-year floodplain areas of _____ consistent with the enumerated findings by:

1. recognizing the right and need of water courses to periodically carry more than the normal flow of water;
2. participating in coordinating efforts of federal, state, and local management activities for 100-year floodplains; and,
3. ensuring the regulations and minimum standards adopted, insofar as possible, balance the greatest public good with the least private injury.

B. Specifically it is the purpose of these Regulations to:

1. restrict or prohibit uses which are dangerous to health, safety, or property in times of flood, or cause increased flood heights or velocities;
2. require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

3. utilize information which identifies lands which are unsuited for certain development purposes because of flood hazards;
4. minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
5. ensure that potential buyers are notified that property is within a 100-year floodplain and subject to the provisions of these Regulations; and,
6. ensure that those who occupy 100-year floodplains assume responsibility for their actions.

CHAPTER II

DEFINITIONS

2.01 Definitions

Unless specifically defined below, words or phrases used in these Regulations shall be interpreted so as to give them the meaning they have in common usage and to give these Regulations their most reasonable application.

Alteration - Any change or addition to a structure that increases its external dimensions.

Appeal - A request for a review of the interpretation of the Floodplain Administrator of any provision of these Regulations or a request for a variance.

Area of Special Flood Hazard - The land in the floodplain within the community subject to inundation by a one percent (1%) or greater chance of flood in any given year, i.e. the 100-year floodplain.

Artificial Obstruction - Development - Any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any 100-year floodplain which may impede, retard, or alter the pattern or flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

Base Flood - A flood having a one percent (1%) chance of being equalled or exceeded in any given year.

Channelization Project - The excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of a stream from its established course.

Establish - To construct, place, insert or excavate.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain - The areas adjoining a stream which would be covered by floodwater.

Floodway - The channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

Floodway Fringe - That portion of the floodplain outside the limits of the floodway.

Flood Insurance Rate Map - The map on which the Federal Insurance Administration has delineated both the 100-year floodplains and the risk premium zones.

Flood Insurance Study - The report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Boundary and Floodway Map and the water surface profiles.

Lowest Floor Elevation - Any floor usable, or that could be converted to a use, for living purposes, storage or recreation.

Mobile Home - A structure that is transportable in one or more sections, built on a permanent chassis and designed to

be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

New Construction - Structures for which the start of construction, substantial improvement, or alteration commences on or after the effective date of these Regulations.

Non-Conforming Use - A land use not in accordance with these Regulations.

Official Floodplain Maps - The Flood Insurance Rate Maps and Flood Boundary - Floodway Maps provided by the Federal Insurance Administration for

_____, dated _____

Permit Issuing Authority - _____.

Riprap - Stone, rocks, concrete blocks, or analogous material that is placed along the banks or bed of a stream for the purpose of alleviating erosion.

Start of Construction - The first placement of permanent construction of a structure (other than a mobile home) on a site, such as pouring of slabs or footings or any work beyond

the start of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets, and/or walkways; nor does it include the excavation for a basement, footings, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, start of construction is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and the installation of utilities) is completed.

Structure - A walled and roofed building, mobile home, or a gas or liquid storage tank, that is principally above ground.

Substantial Improvement - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

- (1) before the improvement or repair is started, or
- (2) if the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor or other structural part of the building commences. A substantial improvement differs from the alteration of a structure in that it is not defined to include increasing or affecting the external dimensions of the structure. The term also does not include either:

- (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
- (2) any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.

Suitable Fill - Fill material which is stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, and tree stumps or other organic material; and is fitted for the purpose of supporting the intended use and/or permanent structure.

Variance - A grant or relief from the requirements of these Regulations which would permit construction in a manner that would otherwise be prohibited by these Regulations.

CHAPTER III

GENERAL PROVISIONS

3.01 Jurisdictional Area

These Regulations shall apply to all lands within the jurisdiction of _____, State of Montana, shown on the Official Floodplain Maps as being located within a 100-year floodplain district.

3.02 Floodplain District Establishment

The floodplain districts established are defined by the 100-year floodplains as delineated in the _____ Flood Insurance Study. The basis for the Flood Insurance Study is a scientific and engineering report entitled, "The Flood Insurance Study for _____, Montana," dated _____, with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. The Official Floodplain Maps, together with the Flood Insurance Report, are on file in the Office of the _____ Floodplain Administrator.

3.03 Floodplain Administrator

_____ has been designated to be the Floodplain Administrator. The responsibilities of this position are outlined in Chapter IV of these Regulations.

3.04 Rules for Interpretation of Floodplain District Boundaries

The boundaries of the 100-year floodplain and floodway shall be determined by scaling distances on the Official Floodplain Maps. Where there appears to be a conflict between a mapped floodplain boundary and actual field conditions,

the _____ Floodplain Administrator may determine that the area is not to be included within the 100-year floodplain. The property owner or developer would then not have to satisfy the provisions of these Regulations.

3.05 Compliance

No structure or land use shall be located, extended, converted or structurally altered without full compliance with the provisions of these Regulations and other applicable regulations. These Regulations meet the minimum floodplain development requirements as set forth by the Montana Board of Natural Resources and Conservation and in the National Flood Insurance Program regulations.

3.06 Abrogation and Greater Responsibility

It is not intended by these Regulations to repeal, abrogate or impair any existing easements, covenants, deed restrictions or underlying zoning. However, where these Regulations impose greater restrictions, the provisions of these Regulations shall prevail.

3.07 Regulation Interpretation

In their interpretation and application, the provisions of these Regulations shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statute.

3.08 Warning and Disclaimer of Liability

These Regulations do not imply that areas outside the delineated floodplain boundaries or permitted land uses within such areas will always be totally free from flooding or flood damages. These regulations shall not create a liability on the part of, or a cause of action against _____, or any officer or employee thereof for any flood damages that may result from reliance upon these Regulations.

3.09 Severability

If any section, clause, provision or portion of these Regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby.

3.10 Disclosure Provision

All owners of property in an identified 100-year floodplain, as indicated on the Official Floodplain Maps, must notify potential buyers or their agents that such property is subject to the provisions of these Regulations. Upon resale of property, the lending institution must notify potential buyers 10 days prior to closing that the property is located within a special flood hazard area. The lender must also notify potential buyers whether, in the event of a flood disaster, federal disaster relief would be available to the property.

CHAPTER IV

Administration

4.01 Administration

A. As provided in Section 3.03 of these Regulations, the _____ Floodplain Administrator has been designated by the _____, and has the responsibility of such position as outlined in these Regulations.

B. The Floodplain Administrator is hereby appointed with the authority to review floodplain development permit applications and proposed uses or construction to determine compliance with these Regulations, and is required to assure all necessary permits have been received from those governmental agencies from which approval is required by federal and state law and local codes, including Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334.

1. Additional Factors - Floodplain development permits shall be granted or denied by the Floodplain Administrator on the basis of whether the proposed establishment, alteration, or substantial improvement of an artificial obstruction or non-conforming use meets the requirements of these Regulations. Additional factors that shall be considered for every permit application are:
 - a. the danger to life and property due to increased flood heights, increased flood water velocities or alterations in the pattern of flood flow caused by encroachments;
 - b. the danger that materials may be swept onto other lands or downstream to the injury of others;

- c. the proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;
- d. the susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- e. the importance of the services provided by the facility to the community;
- f. the requirement of the facility for a water-front location;
- g. the availability of alternative locations not subject to flooding for the proposed use;
- h. the compatibility of the proposed use with existing development and anticipated development in the foreseeable future;
- i. the relationship of the proposed use to the comprehensive plan and floodplain management for the area;

- j. the safety of access to property in times of flooding for ordinary and emergency services; and,
- k. such other factors as are in harmony with the purposes of these Regulations, the Montana Floodplain and Floodway Management Act and the National Flood Insurance Program.

C. A floodplain development permit application is considered to have been automatically granted 60 days after the date of receipt of the application by the Floodplain Administrator, unless the applicant has been notified that the permit is denied, conditionally approved or additional information pertinent to the permit review process is required.

D. The Floodplain Administrator shall adopt such administrative procedures as may be necessary to efficiently administer the provision of these Regulations.

E. The Floodplain Administrator shall maintain such files and records as may be necessary to document nonconforming uses, flood elevations, fee receipts, the issuance of permits, agendas, minutes, records of public meetings, and any other matters related to floodplain management in _____.

Such files and records shall be open for public inspection. In matters of

litigation, _____, Attorney,
may restrict access to specific records.

- F. Copies of all permits granted must be sent to the Department of Natural Resources and Conservation in Helena, Montana.
- G. In riverine situations, notification by the Floodplain Administrator must be made to adjacent communities, the Floodplain Management Section (DNRC), and the Federal Insurance Administration, prior to any alteration or relocation of a stream. The flood-carrying capacity within the altered or relocated portion of any stream must be maintained.

4.02 Permit Applications

- A. Activities or uses which require the issuance of a permit, including the expansion or alteration of such uses, shall not be initiated, established or undertaken until a permit has been issued by the Floodplain Administrator.
- B. Permit applicants may be required to furnish such of the following as is deemed necessary by the Floodplain Administrator for determining the suitability of the particular site for the proposed use:

1. Plans in duplicate drawn to scale with dimensions shown, showing the nature, location and elevation of the lot, existing and proposed structure locations, fill, storage or materials sites, floodproofing measures, first floor of proposed structures in mean sea level elevation and location of the channel;
2. A plan view of the proposed development indicating external dimensions of structures, street or road finished grade elevations, well locations, individual sewage treatment and disposal sites, excavation and/or fill quantity estimates, site plan and/or construction plans; and,
3. Specifications for floodproofing, filling, excavating, grading, riprapping, storage of materials and utilities location.

C. Applicants who have received permits are required to furnish the following, at the time of an on-site conformance inspection, for determining that the permit specifications and conditions have been met:

1. Certification by a registered professional engineer or licensed land surveyor of the actual mean sea level elevation of the lowest floor (including basement) of

all new, altered or substantially improved structures.

2. If floodproofing techniques were utilized for the above described structures, then the mean sea level elevation to which the floodproofing was accomplished must be similarly certified.

4.03 Emergency Waiver

A. Emergency repair to and/or replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized and floodplain development permit requirements waived if:

1. upon notification and prior to the emergency repair and/or replacement, the Floodplain Administrator determines that an emergency condition warranting immediate action exists; and
2. the Floodplain Administrator agrees upon the nature and type of proposed emergency repair and/or replacement.

B. Authorization to undertake emergency repair and/or replacement work may be given verbally if the Floodplain Administrator feels that such a written authorization would unduly delay the emergency works. Such verbal authorization must be followed by a written authorization stating the

emergency condition, the type of emergency work agreed upon, and a notation that a verbal authorization had been previously given.

4.04 Review-Variances-Appeals

- A. There is hereby created a _____ Board of Adjustment, the membership, administration and rules of procedure of which are identical to and the same as the _____ Board of Adjustment.
- B. The _____ may, by variance, grant a permit that is not in compliance with the minimum standards contained in these Regulations according to the following procedures:
 1. Variances shall not be issued for areas within a floodway if any increase in flood elevations or velocities would result;
 2. Variances shall only be issued upon:
 - a. a showing of good and sufficient cause;
 - b. a determination that refusal of a permit would, because of exceptional circumstances, cause a unique or undue hardship on the applicant or community involved;

- c. a determination that the granting of a variance will not result in increased flood heights, present additional threats to public safety, be an extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing state or local laws;
- d. a determination that a proposed use would be adequately floodproofed;
- e. a determination that a reasonable alternative location outside the floodplain is not available;
- f. a determination that the variance requested is the minimum necessary, considering the flood hazard, to afford relief; and
- g. approval of the Montana Department of Natural Resources and Conservation, upon request from the _____, prior to formally approving any permit application which is in variation to these Regulations.

3. Variances shall be issued in writing from the _____ and shall notify the applicant that:

- a. a specific variance is granted, and that certain conditions may be attached;
- b. the issuance of a variance to construct a structure below the 100-year floodplain elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- c. such construction below the 100-year flood elevation increases risks to life and property. The Floodplain Administrator shall maintain the records of variance notification, variance actions, including justification for their issuance, and forward copies of all variance actions to the Montana Department of Natural Resources and Conservation.

C. Appeals of any decision of the _____ or its officers or agencies may be taken by an aggrieved person or persons, jointly or separately, to a court of record.

4.05 Fees

A processing fee of _____ (not to exceed \$25.00) shall be submitted with each permit application.

4.06 Violation Notice

The Floodplain Administrator shall bring any violation of these Regulations to the attention of

_____, the

_____, Attorney and the Montana Department of Natural Resources and Conservation.

4.07 Compliance

Any use, arrangement or construction not in compliance with that authorized shall be deemed a violation of these Regulations and punishable as provided in Section 4.08. An applicant may be required to submit certification by a registered professional engineer, architect or other qualified person designated by the Floodplain Administrator that finished fill and building floor elevations, floodproofing or other flood protection measures were accomplished in compliance with these Regulations.

4.08 Penalties

Violation of the provisions of these Regulations or failure to comply with any of the requirements, including permit approval prior to development of flood-prone lands and conditions and safeguards established in connection with

variances, shall constitute a misdemeanor. Any person who violates these Regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100 or be imprisoned in jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

CHAPTER V

Specific Standards

5.01 Application

The minimum floodplain development standards listed in this chapter apply to the floodway/floodway fringe portions of the 100-year floodplain as delineated on the _____ Floodway and Flood Boundary Maps, and also correspond to the numbered A zones depicted on the _____ Flood Insurance Rate Maps.

5.02 Floodway

A. Uses Allowed Without Permits. The following open-space uses shall be allowed without a permit anywhere within the floodway, provided that such uses conform to the provisions of Chapter VII of these Regulations, are not prohibited by any other ordinance, resolution or statute, and do not require fill, excavation, permanent storage of materials or equipment or structures other than portable structures:

1. Agricultural uses;
2. Accessory uses such as loading or parking areas, or emergency landing strips associated with industrial-commercial facilities;
3. Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat-launching ramps, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking or horseback riding trails;
4. Forestry, including processing of forest products with portable equipment;

5. Residential uses such as lawns, gardens, parking areas and play areas;
6. Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells; and
7. Fences, except permanent fences crossing channels.

B. Uses Requiring Permits The following artificial obstructions and non-conforming uses may be permitted in the floodway subject to the issuance of a permit by the Floodplain Administrator:

1. Excavation of material from the pits and pools provided that:
 - a. a buffer strip of undisturbed land of sufficient width to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;
 - b. the excavation meets all applicable laws and regulations of other local and state agencies; and,

- c. excavated material is stockpiled outside the floodway;
- 2. Railroad, highway and street stream crossings, provided the crossings are designed to offer minimal obstruction to flood flow;
- 3. Limited filling for highway, street and railroad embankments not associated with stream crossings, provided that:
 - a. reasonable alternative transportation routes outside the designated floodway are not available; and
 - b. such floodway encroachment is located as far from the stream channel as possible;
- 4. Buried or suspended utility transmission lines, provided that:

- a. suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six feet higher than the elevation of the flood of 100-year frequency;
- b. towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; and,
- c. utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for a flood of 100-year frequency. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the final calculated figure shall be subject to approval by the Floodplain Administrator;

5. Storage of materials and equipment, provided that:

- a. the material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or,
- b. the material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic or explosive materials shall not be permitted;

6. Domestic water supply wells, provided that:
 - a. they are driven or drilled wells located on ground higher than the surrounding ground to assure positive drainage from the well;
 - b. well casings are water tight to a distance of at least 25 feet below the ground surface;
 - c. water supply and electrical lines have a watertight seal where the lines enter the casing;
 - d. all pumps, electrical lines and equipment are either of the submersible type or are adequately floodproofed; and,
 - e. check valves are installed on main water lines at wells and all building entry locations;
7. Buried and sealed vaults for sewage disposal in recreational areas, provided that they meet applicable laws and standards administered by the Montana Department of Health and Environmental Sciences;
8. Public or private campgrounds, provided that:

- a. access roads require only limited fill and do not obstruct or divert flood waters; and
- b. no dwellings or permanent mobile homes are allowed;

9. Structures accessory to the uses permitted in this section such as boat docks, marinas, sheds, picnic shelters, tables and toilets, provided that:

- a. the structures are not intended for human habitation;
- b. the structures will have a low flood damage potential;
- c. the structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;
- d. the floodproofing standards of Chapter VII are met; and,
- e. the structures will be constructed and placed so as to offer a minimal obstruction to flood flows and are anchored to prevent flotation;

10. Replacement of mobile homes within an existing mobile home park or mobile home subdivision, provided that the mobile homes are anchored to resist flotation, collapse or lateral movement by providing over-the-top frame ties. Special requirements shall be that:

- a. over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations. Mobile homes less than 50 feet long require one additional tie per side;
- b. frame ties be provided at each corner of the home with five additional ties per side at intermediate points. Mobile homes less than 50 feet long require four additional ties per side;
- c. all components of the anchoring system be capable of carrying a force of 4,800 pounds;
- d. any additions to the mobile home must be similarly anchored; and,
- e. adequate surface drainage and access for a hauler are provided;

11. Substantial improvements to any structure provided that the provisions of Section 5.03-B.3. and Section 5.03-B.4. of these Regulations are met;
12. All other artificial obstructions, substantial improvements or non-conforming uses not specifically listed in, or prohibited by, these Regulations.

G. Permits for Flood Control Works. Flood control works shall be allowed within floodways subject to the issuance of a permit by the Floodplain Administrator with the following conditions:

1. Levees and floodwalls are permitted if:
 - a. the proposed levee or floodwall is designed and constructed to safely convey a flood of 100-year frequency; and,
 - b. the cumulative effect of the levee or floodwall combined with allowable floodway fringe encroachments does not increase the unobstructed elevation of the flood of 100-year frequency. The Floodplain Administrator may establish either a lower or higher permissible increase in the elevation of the flood of 100-year frequency for individual levee projects, with concurrence of the

Montana Department of Natural Resources and
Conservation and the Federal Insurance
Administration based upon the following criteria:

1. The estimated cumulative effect of other reasonable anticipated future permissible uses; and
2. The type and amount of existing flood-prone development in the affected area;
- c. the proposed levee or floodwall, except those to protect agricultural land only, are constructed at least 3 feet higher than the elevation of a flood of 100-year frequency;

2. Riprap, except that which is hand-placed, if:

- a. the riprap is designed to withstand a flood of 100-year frequency;
- b. the riprap does not increase the elevation of the flood of 100-year frequency; and,
- c. the riprap will not increase erosion upstream, downstream, or adjacent to the riprap site;

3. Channelization projects if they do not significantly increase the magnitude, velocity or elevation of the flood of 100-year frequency in the proximity of the project;

4. Dams, provided that:

- a. they are designed and constructed in accordance with approved safety standards; and,
- b. they will not increase flood hazards downstream, either through operational procedures or improper hydrologic design;

D. Permits for Water Diversions. Permits for the establishment of a water diversion or change in place of diversion shall not be issued if, in the judgment of the Floodplain Administrator:

1. the proposed diversion will increase the upstream elevation of the flood of 100-year frequency;
2. the proposed diversion is not designed and constructed to minimize potential erosion from a flood of 100-year frequency; and,

3. any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a flood of 100-year frequency.

E. Prohibited Uses. The following artificial obstructions and non-conforming uses are prohibited within the floodway:

1. New construction and alterations of any structure;
2. Encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway that would result in erosion of embankment, obstruction of the natural flow of waters, or increase in flood levels within the community during the occurrence of the flood of 100-year frequency;
3. The construction or permanent storage of an object subject to flotation or movement during flood level periods;
4. Mobile homes, except in an existing mobile home park or mobile home subdivision;

5. Solid waste disposal, water distribution systems, and sewage treatment and/or disposal systems, except as allowed or approved under the laws and standards administered by the Montana Department of Health and Environmental Sciences; and,
6. Storage of highly toxic, flammable or explosive materials.

5.03 Floodway Fringe

- A. Uses Allowed Without Permits. All uses allowed in the floodway, according to the provisions of Section 5.02 A of these Regulations, shall also be allowed without a permit in the floodway fringe.
- B. Uses Requiring Permits. All uses allowed in the floodway subject to the issuance of a permit, according to the provisions of Section 5.02 B and Section 5.02 C of these Regulations, shall also be allowed by permit within the floodway fringe. In addition, new construction, substantial improvements and alterations to structures, including but not limited to residential, commercial and industrial construction, and suitable fill shall be allowed by permit from the Floodplain Administrator subject to the following conditions:

1. Such structures or fill must not be prohibited by any other statute, regulation, ordinance or resolution;
2. Such structures or fill must be compatible with local comprehensive plans;
3. The new construction, alterations and substantial improvements of residential structures must be constructed on suitable fill such that bottom floor elevations (including basement) are two feet or more above the elevation of the flood of 100-year frequency. The suitable fill shall be at an elevation no lower than the elevation of the flood of 100-year frequency and shall extend for at least fifteen feet, at that elevation, beyond the structure in all directions;
4. The new construction, alteration and substantial improvement of commercial and industrial structures must be either constructed on suitable fill, as specified in Section 5.03-B.3. of these Regulations, or be adequately floodproofed to an elevation no lower than two feet above the elevation of the flood of 100-year frequency. Floodproofing shall be accomplished in accordance with Chapter VII of these Regulations and shall further include impermeable membranes or materials for floors and walls,

water-tight enclosures for all windows, doors, and other openings, and be certified by a registered professional engineer or architect that the flood-proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces associated with the flood of 100-year frequency;

5. A development proposed for a 100-year floodplain, where water surface elevations are available but no floodway is delineated, may not significantly increase flood velocities or depths or generally alter patterns of flood flow. The Floodplain Administrator may require a permit applicant to furnish additional hydraulic data before acting on a permit application for such a floodplain. The data may include, but are not limited to, any of the following:
 - a. A hydraulic study documenting probable effect on upstream or downstream property owners caused by the proposed development; or,
 - b. The calculated increase in the 100-year frequency water surface profile caused by the proposed development.

Permits for such proposed development may be modified or denied if the additional information shows that the proposed use would cause an additional flood hazard to adjacent property or significantly increase flood heights. A significant increase in flood heights is to be one-half foot unless existing or anticipated development in the area dictates a lesser value of allowable increase.

Also, 100-year water surface profile data shall be provided for subdivision proposals and other proposed developments that contain at least 50 lots or five acres (whichever is less);

6. Mobile home stands on lots are elevated on compacted fill so that the lowest floor of the mobile home will be two feet above the elevation of the 100-year flood.
 - a. Adequate surface drainage and access for a hauler are provided for;
7. Mobile homes proposed for use as a residential, commercial or industrial structure must meet the anchoring requirements of Section 5.02-B.10. of these Regulations;

8. Roads, streets, highways and rail lines shall be designed to minimize increases in flood heights. Where failure or interruption of transportation facilities would result in danger to public health or safety, the facility shall be located two feet above the elevation of the flood of 100-year frequency; and,
9. Agricultural structures that have a low damage potential, such as sheds, barns, shelters, and hay or grain storage structures must be adequately anchored to prevent flotation or collapse.

C. Prohibited Uses. The following artificial obstructions and non-conforming uses are prohibited within the floodway fringe:

1. Solid waste disposal, water distribution systems, and sewage treatment and/or disposal systems, except as allowed or approved under the laws and standards administered by the Montana Department of Health and Environmental Sciences; and,
2. Storage of highly toxic, flammable, or explosive materials. Storage of petroleum products may be allowed by permit if buried in tightly sealed and contained containers or if stored on compacted fill at least two feet above the elevation of the flood of 100-year frequency.

5.04 Shallow Flooding

A. Shallow flooding areas are delineated as A O Zone floodplains on the _____ Flood Insurance Rate Maps. The provisions of Section 5.03, (Floodway Fringe) of these Regulations shall apply to A O Zone floodplains, including Section 5.03-B.5. of these Regulations. The flooding depth of 100-year frequency is indicated as the depth number on the Flood Insurance Rate Maps and shall be referenced to the crown of the nearest street or stream flow line in determining fill and/or floodproofing heights which are to be utilized in applying the provisions of Section 5.03-B.3. and Section 5.03-B.4. of these Regulations.

1. Floodplain Boundary Interpretation. The Floodplain Administrator shall make interpretations where needed, as to the exact location of an A O Zone floodplain boundary when there appears to be a conflict between a mapped boundary and actual field conditions.

GENERAL STANDARDS

6.01 Applications

The minimum floodplain development standards listed in this chapter apply to the 100-year floodplains delineated by approximate methods and identified as unnumbered A Zones on the _____ Flood Insurance Rate Maps.

- A. Uses Allowed Without Permits. All uses allowed in a floodway, according to the provisions of Section 5.02-A of these Regulations, shall also be allowed without a permit in the floodway fringe.

- B. Uses Requiring Permits. All uses allowed in the floodway fringe subject to the issuance of a permit, according to the provisions of Section 5.03-B, shall require permits from the Floodplain Administrator for Zone A floodplains. Also, the provisions of Section 5.03-B.5. apply to the Zone A floodplains with no floodway delineated or water surface profile computed. Since there are no 100-year frequency water

surface profiles computed for Zone A floodplains, the following conditions also shall apply:

1. Elevation data on the 100-year frequency flood shall be provided for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less) and used in applying Sections 5.03-B.3 and 5.03-B.4 of these Regulations;
2. Obtain, review, and reasonably utilize any 100-year flood elevation data available from a federal, state, or other source, until such data has been provided by the Federal Insurance Administration to enforce Section 5.03 B.3 and 5.03 B.4 of these Regulations, and;
3. Historical flood elevations may be used by the Floodplain Administrator in determining suitable fill or floodproofing elevations to be achieved, and used in accordance with Section 5.03-B.3. and Section 5.03-B.4. of these Regulations;
4. If historical flood evidence is not available, then the Floodplain Administrator shall determine, from a field review at the proposed development site, an appropriate fill and/or floodproofing elevation to be utilized in applying Sections 5.03-B.3. and 5.03-B.4. of these Regulations;

5. Proposed structures must be anchored to prevent flotation or collapse and must be located as far from stream channels as practicable.

C. Prohibited Uses. Those uses prohibited in the Floodway Fringe, in accordance with Section 5.03-C. of these Regulations, shall also be prohibited within the Zone A floodplain boundaries.

D. Floodplain Boundary Interpretation. The Floodplain Administrator shall make interpretations where needed, as to the exact location of the Zone A floodplain boundary when there appears to be a conflict between a mapped boundary and actual field conditions.

CHAPTER VII

FLOODPROOFING REQUIREMENTS

7.01 Certification

If the following floodproofing requirements are to be utilized for a proposed structure, as stipulated by the Floodplain Administrator in accordance with these Regulations, the methods used must be certified as adequate by a registered professional engineer or architect.

7.02 Conformance.

Permitted floodproof systems shall conform to the conditions listed below:

A. Electrical Systems

1. All incoming power service equipment, including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the elevation of the flood of 100-year frequency provided that the equipment can be disconnected by a

single plug-and-socket assembly of the submersible type;

2. Portable or movable electrical equipment may be placed below the elevation of the flood of 100-year frequency, if the equipment can be disconnected by a single plug-and-socket assembly of the submersible type;
3. The main power service line shall have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the floodplain of 100-year frequency and above the elevation of the flood of 100-year frequency;
4. All electrical wiring systems installed at or below the elevation of the flood of 100-year frequency shall be suitable for continuous submergence and may not contain fibrous components.

B. Heating Systems

1. Float operated automatic control valves must be installed in supply lines to gas furnaces so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnaces are located;

2. Manually operated gate valves that can be operated from a location above the elevation of the flood of 100-year frequency also shall be provided in gas supply lines;
3. Electric heating systems must be installed in accordance with the provisions of Section 7.02 A.

C. Plumbing Systems

1. Sewer lines, except those to be buried and sealed in vaults, must have check valves installed to prevent sewage backup into permitted structures;
2. All toilet stools, sinks, urinals and drains must be located such that the lowest point of possible water entry is at least two feet above the elevation of the flood of 100-year frequency.

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**WATER-RELATED
PROJECTS-GUIDE TO STATE &
FEDERAL LAWS,
REGULATIONS, & PERMITS**

Water-Related Projects Guide

TO

STATE & FEDERAL LAWS, REGULATIONS, & PERMITS NEEDED FOR THE FOLLOWING OR SIMILAR ACTIVITIES

Bridges	Water Use
Culverts	Pipelines
Fords	Activities in Floodplain
Dredging	Sewage Systems
Channel or Bank Changes	Other Construction in Water
Dams or Diversions	Bodies
Discharge into Streams or Lakes	Ponds

Introduction. The purpose of this guide is to help people planning water-related projects to determine what agency contacts and permits are needed.

Use of the Guide. The guide has two parts. One is titled "Permit Guide" in which laws, activities, and agency contacts are listed. A separate list is provided to key the agency numbers shown on the chart.

The second part lists the various laws; gives a brief description; summarizes requirements, i.e., permits, bonds, etc.; and lists the agency involved and where to make contacts.

The laws listed are the most commonly encountered. Not all laws apply in all cases; but because each project has its own impacts, it will be helpful to make an agency contact to see what is needed. Each law is a separate legal entity and where more than one law applies, separate permits may be required. Also, you may be required to work under other laws that are not listed, but the agency contact will help guide you to them. There are special areas that have limitations on use; i.e., National Parks, Indian Reservations, Wildlife Refuges and Parks, Wilderness Areas, and other similar areas. In these cases, contact the managing agency.

Permit Guide

ACTIVITY

*** LAWS	Work In or On Stream Channels or Banks			Discharging Water into Live Stream			Water Use or Diversion		
	F	S	P	F	S	P	F	S	P
	LAND		LAND		LAND		LAND		
Coal & Uranium	**								
<u>Reclamation</u>	7,9,11	7	7	-	-	-	-	-	-
<u>Open Cut Mining</u>	7,9,11	7	7	-	-	-	-	-	-
Metal Mine									
<u>Reclamation</u>	7,9,11	7	7	-	-	-	-	-	-
<u>*General Mining Law</u>	9,11	-	-	9,11	-	-	9,11	-	-
Water Pollution Control	6	6	6	6	6	6	6	6	6
<u>Water Rights</u>	-	-	-	-	-	-	5,15	5	5
Natural Streambed & Land Preservation - "310"	9,4						9,4		
<u>Stream Protection - "124"</u>	9,4	4	-	-	-	-	9,4	4	-
<u>*Water Pollution Control Act - "410"</u>	13	13	13	-	-	-	13	13	13
Floodplain & Floodway Management	-	5,2	5,2	-	-	-	-	5,2	5,2
Lakeshore Protection	2	2	2	-	-	-	2	2	2
<u>*Wetlands - Floodplain E.O.</u>	9,						9,11	10,	10,
Local Zoning Laws	11,13	10,13	10,13	9,11	10	10	13	13	13
State & Federal Archaeologic & Historic	8,8,11	7,4		9,11	7,4		9,11	7,4	8,
<u>*FERC Regulations</u>	-	-	-	-	-	-	11,14	-	-
<u>*River and Harbor Act</u>	13	13	13	-	-	-	13	13	13

* Federal Laws

** Agencies Involved (Contact or organization owning or land if multiples are listed.)

*** F = Federal; S = State; P = Private

Local

1. Conservation Districts
2. County Commissioners
3. City

8. Montana State Historic Preservation Office
Veteran's Memorial Building
225 North Roberts
Helena, MT 59620
449-4584

State of Montana

4. Dept. Fish, Wildlife & Parks
Ecological Services Division
1420 E. Sixth Ave.
Helena, MT 59620
449-2603
5. Dept. of Natural Resources
and Conservation
32 South Ewing
Helena, MT 59620
449-2864
- Conservation District Division
32 South Ewing
Helena, MT 59620
449-5640
- Floodplain Management Section
Engineering Bureau
32 South Ewing
Helena, MT 59620
449-2864
6. Dept. of Health & Environmental Sciences
Subdivision Bureau
Board of Health Bldg.
Helena, MT 59620
449-3946
- Solid Waste Bureau
Cogswell Bldg.
Helena, MT 59620
449-2821
- Water Quality Bureau
Cogswell Bldg.
Helena, MT 59620
449-2406
7. Dept. of State Lands
1625 11th Ave.
Helena, MT 59620
449-2074

Federal

9. USDA, Forest Service
Federal Building
Helena, MT 59626
449-5201
10. USDA, Soil Conservation Service
Bozeman Office
Bozeman, MT 59715
587-5271
11. USDI, Bureau of Land Management
P.O. Box 30157
Billings, MT 59107
657-6561
12. USDI, Fish & Wildlife Service
3150 Canyon Ferry Rd.
East Helena, MT 59635
227-5711
13. US Army, Corps of Engineers
Seattle Office
Box C-3755
Seattle, WA 98124
(206) 764-3660
- Omaha Office
6014 U.S. Post Office
& Courthouse
215 N. 17th St.
Omaha, NE 68102
(402) 221-1221
14. Fed. Energy Regulatory Commission
825 N. Capital St.
Washington, D.C. 20426
(202) 357-8400
15. Environmental Protection Agency
Federal Bldg.
Helena, MT 59626
449-5432

A. LOCAL

1. Conservation Districts

2. County Commissioners

Lakeshore Protection - This permit program is administrated by County Commissioners. The requirements are similar to those applied to floodplains. County planning officers are the source of permit applications.

Local Zoning Laws - No effort was made to obtain this information because of the large number of counties and municipalities involved. Planning of rural areas is increasing and is more active in western Montana and adjacent to larger cities. Suggest that local inquiries be made.

3. City

Local Zoning Laws.

B. STATE

4. Department Of Fish, Wildlife and Parks, - 1420 East 6th Ave., Helena, Montana 59620.

Natural Streambed & Land Preservation Act - Commonly known as the 310 permit. This state law requires any private persons or organizations (non-Governmental), before installation of any activity on private or public lands within the high water marks of a perennial flowing stream, to gain the approval of the Board of Supervisors of the local Conservation District, or, where no Conservation District exists, approval of the Board of County Commissioners. Requires submission of a "Notice of Proposed Project," detailed plans, and review by Department of Fish, Wildlife and Parks.

Stream Protection - Often referred to as the 124 permit. Similar requirements as the 310 permit but applies only to state, county, municipal or subdivisions of state government or federal agencies, not individuals working on public lands unless the individual is acting as an agent of an agency or working under contract for an agency. Provides that the state Fish, Wildlife and Parks department must be notified when any project will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction whether performed by governmental or private parties. Requires application and permit on state lands. National forest lands are included by a Memorandum of Understanding which invites notification of projects by national forests and participation by state Fish, Wildlife and Parks department. Projects by established irrigation districts are exempt.

5. Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59620

Natural Streambed and Land Preservation Act - (Commonly known as the 310 permit). This state law requires any private persons or organizations (non-governmental), before installation of any activity on private or public lands within the high water marks of a perennial flowing stream, to gain the approval of the Board of Supervisors of the local Conservation District, or, where no Conservation District exists, approval of the Board of County Commissioners. It further requires submission of a "Notice of Proposed Project," detailed plans and review by Department of Fish, Wildlife and Parks. In conjunction with the "124" permit system (note "Stream Protection" under Dept. of Fish, Wildlife and Parks) these permit requirements allow selective intervention in projects involving floodplains.

Floodplain and Floodway Management Act - Administered by the Floodplain Management Section, allows this agency to restrict or prohibit uses which are dangerous to health or to safety of property during floods. This agency is empowered to initiate a comprehensive program for the delineation of designated floodplains and floodways for every watercourse and drainway in the state. After a thorough study and a public hearing, land use regulations meeting minimum state requirements must be established within the affected political subdivisions. It is unlawful for a person to establish an artificial obstruction within a designated floodplain without a permit. Permits are granted for proposed uses conforming to standards established by the Board of Natural Resources and Conservation.

Water Rights - Before a person can divert or impound water for a new use, or change an established use of water in any way, he must receive a permit from the Water Rights Bureau of the Department of Natural Resources and Conservation. This includes water removed from a stream for the purposes of dredge mining.

Most holders of existing water rights must refile those rights in compliance with the current Adjudication Statute (Senate Bill 76) before January 1, 1982. For both new and established rights, situations vary; so contact must be made with local Water Rights Bureau field office's.

6. Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

Material Recycling Act - Is administered through the Solid Waste Bureau. This is the licensing agency for solid waste dump sites in Montana. They are required under (NEPA) federal rules (EPA-CER 257.3-1, 9- 13-79, Vol. 44 No. 179 pp. 534-38) and state administrative rules (1614.505) to prohibit locating solid waste disposal sites within a 100-year floodplain. This bureau reviews dump site permit applications for possible floodplain involvement. As a matter of routine, appropriate detailed floodplain information is requested from DNRC. Whenever possible, they seek out and utilize local floodplain administrators.

Montana Water Quality Act - Is administered through the Water Quality Bureau. This state regulation provides for classification of surface waters and establishment of water quality standards and a permit program to control the discharge of pollutants into state waters. The Bureau requires applications be submitted at least 180 days prior to commencing work which would result in a discharge.

As a matter of policy, applications are reviewed for encroachment into identified floodways. Floodproofing requirements are also required for siting if these facilities are within floodplains. Whenever there is a recognized possibility of floodplain involvement, the Water Quality Bureau calls upon DNRC's floodplain management section for verification.

The State Sanitation in Subdivision Law - Administered by the Subdivision Bureau, controls water supply, sewage disposal and solid waste disposal. Under the administrative rules of Montana (ARM 16-2.14 (10)-514340 Subdivision) individual sewage treatment systems must not be located within 100 horizontal feet of an identified floodplain.

This agency aggressively enforces this administrative rule when reviewing applications for subdivision development. Whenever the possibility of floodplain involvement arises, the Subdivision Bureau contacts DNRC for map review.

Water Rights - Before a person can divert or impound water for a new use, or change an established use of water in any way, he must receive a permit from the Water Rights Bureau of the Department of Natural Resources and Conservation. This includes water removed from a stream for the purposes of dredge mining.

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General Mining Law - Applies to mining activities on federal land. If a miner plans to conduct any activity which might cause surface disturbance, he must file a Letter of Intent with the land management agency's local office. Depending on the nature of the activity and affected environment, a Plan of Operation may be required. Also, a reclamation bond may be required.

8. Historical Society, Memorial Bldg., Helena, Montana 59620.

Archaeological & Historical - Several regulations apply to state and federal lands or where agencies fund projects other than technical assistance. Laws require a cultural resource survey be made prior to any ground-disturbing activity. Plan on a 30-day notice for the cultural survey which can only be done during snow-free periods. If a cultural resource is found, it must be evaluated for possible nomination to the National Register. If eligible, the site must be avoided or impacts mitigated; i.e., salvage archaeology. On federal land, contact local land managers. On state or private land, contact the State Historic Preservation Office in Helena.

Department of Administration, Mitchell Building, Capital Station, Helena, Montana 59620.

Building Codes Division - Functioning under the authority of Section 50-60-101 et seq. MCA, this agency is responsible for regulating, through a permit system, the quality and safety of "public" structures. These regulatory powers cover commercial buildings and multifamily dwellings larger than a four-plex.

Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620.

Community Development Division - Similar to DHES's Subdivision Bureau, the Community Development Division has responsibility for enforcing standards for subdivisions. Under the authority of Section 76-3-504 et seq. MCA, this agency requires that local land use regulations contain provisions for the denial of subdivisions for building purposes in areas where natural conditions present potential hazards, including flooding and mudslides. Further, in areas located within the floodway of a flood of 100-year frequency, or deemed by the governing body to be subject to flooding, permits for subdivision are denied. If any portion of a proposed subdivision is within 2,000 horizontal feet and less than 20 vertical feet of a live stream draining an area of 26 sq. mi. or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider is required to submit survey data for use in delineating the 100-year floodway.

C. FEDERAL

9. U.S. Forest Service, Federal Building, Helena, Montana 59601.

10. U.S. Department of Agriculture, Soil Conservation Service, Bozeman, Montana 59715.

11. U.S. Department of the Interior, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

12. USDI, Fish & Wildlife Service, Federal Building, Helena, Montana 59601.

13. U.S. Army, Corps of Engineers, Seattle Office (206) 764-3660 and Omaha Office (402) 221-4407.

Federal Water Pollution Control Act (Clean Water Act) - Section 404 of this act requires that a Department of the Army permit, issued by the Corps of Engineers, is required for the discharge of dredged or fill material into waters of the United States or on adjacent wetlands. Some minor activities are allowed by nationwide or general permits. Contact should be made with the appropriate District Office prior to performing any work of this nature to determine permit requirements.

River and Harbor Act - Section 10 of the River and Harbor Act of 1899 requires that a Department of the Army permit, issued by the Corps of Engineers, be issued for the performance or replacement of any work in navigable waters of the United States. The Kootenai River is considered to be a navigable water of the United States from Jennings upstream to the Canadian border. Contact the Seattle District for permit requirements on this waterbody.

The Missouri River from Three Forks downstream to the state line and the Yellowstone River from Emigrant downstream to the state line are also considered navigable waters. Contact the Omaha District of the Corps of Engineers for permit requirements on these rivers.

14. Federal Energy Regulatory Commission, 825 N. Capital Street, Washington, D.C. 20426.

Formerly called Federal Power Commission (FPC). Issues licenses for hydroelectric projects and primary transmission lines on federal lands which includes licensing of minor projects; i.e., water-driven power generators for home use. Allow nine months for processing. Contact FERC at Washington, DC.

15. Environmental Protection Agency, Federal Bldg., Helena, Montana 59601.

E.O. 11988 Flood Plain Management & E.O. 11990 Protection of Wetlands - These executive orders apply to federal agencies and provide guidance relative to their actions dealing with the nation's flood plains and wetlands, whether federally or privately owned. They state the federal government's responsibility to influence activities so as to avoid direct or indirect support of development of these lands wherever there is a practical alternative. Should you have a project on such lands, you will be advised on requirements by the federal agency managing these lands. Contact the local agency office. Decision making process for E.O. 11988 is attached.

State & Federal Environmental Acts - Commonly called MEPA (state), NEPA (federal). Both acts require an Environmental Assessment (EA) for projects on federal land or where government money is spent on a project. Technical assistance (such as that supplied by SCS to ranchers) is not considered government project money. An EA must be prepared prior to issuing any permit. Normal time span is 15-60 days depending on complexities. Should an Environmental Impact Statement (EIS) be required, the process could take over a

year to complete. Contact state or federal agency responsible for management of land for details. Private land may be indirectly affected if impacts occur on these lands and a project is directed toward the impact from federal land. In these cases, the permit on federal land would not be issued.

State and local legal authorities for control of flood hazard areas

Montana legal codes have been researched for laws addressing water, land use or hazard mitigation authority. Emphasis was placed upon the laws and their relevant administrative agencies which had management responsibilities relating to flood hazard areas. The following laws were reviewed:

Title 10-Disaster and Emergency Services (DES)

Title 75-Environmental Protection -- especially the following sections:

75-5 Water Quality (DHES)

75-6 Public Water Supply (DHES)

75-7 Streambed and Land Preservation ("310 Permit") (DNRC-FWD)

75-10 Material Recycling (Solid Waste Management Act) (DHES)

Title 76 - Land Resources and Use -- especially the following sections:

76-1 Planning Boards

76-2 County Zoning

76-3 Subdivisions and Platting Act (DCA rules address Floodplains)

76-4 Sanitation in Subdivisions (DHES rules address Floodplains)

76-5 State Floodplain and Floodway Management Act (DNRC)

76-6 Open Spaces (local govn't--allows easements for flood control)

76-11 Wild and Scenic Resources

76-15 Conservation Districts (DNRC-"310" Permit-allows anti-soil erosion actions)

Title 77-State Lands--especially the following sections:

77-2 Exchange of land (DSL—allows exchange for flood control easements)

Title 82-Reclamation--especially the following section:

82-4 Strip and underground mine 82-4 Strip and underground mine
siting (DSL—identifies floodprone areas as unsuitable for coal mining).

D

FORMS

FLOODPLAIN DEVELOPMENT PERMIT

D-1

THIS SECTION TO BE COMPLETED BY THE APPLICANT

Name of Applicant _____ Date _____

Address _____ Phone _____

Location of Proposed Development

Description of Development

Residential Commercial Mobile Home New Construction

Addition or Improvement Subdivision Mobile Home Park

Fill Watercourse Alteration Other _____

Signature of Applicant

Activities or uses which require a permit shall not be initiated until a permit has been issued by the Floodplain Administrator.

Attach to the application the following information where applicable: Plans in duplicate, drawn to scale showing the nature, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required: (1) mean Sea Level (MSL) elevation of the lowest floor (including basement) of all structures; (2) MSL elevation to which any structure is floodproofed; (3) a description of the extent to which any watercourse will be altered. Permit applicants may be required to furnish such additional information as may be deemed necessary by the Floodplain Administrator for determining suitability of the site for the proposed use.

A permit fee of \$25.00 must accompany this application.

Send this application and all correspondence concerning this permit to:

Name _____

Title

Address

Telephone Number

ADMINISTRATIVE ACTION

Permit Number _____

Fee Received _____ Date _____

TO BE COMPLETED BY THE FLOODPLAIN ADMINISTRATOR

The proposed development is located in the: Floodway Floodfringe

The Base Flood Elevation at the development site is: _____

Source Documents: _____

Plan Review

MSL Elevation to which the first floor is to be elevated: _____ feet.

MSL Elevation to which the structure is to be floodproofed: _____ feet.

MSL Elevation to which the compacted fill is to be elevated: _____ feet.

Action

The proposed development is not in conformance with applicable Floodplain Management standards (explanation attached). Permit is denied.

The proposed development is in partial conformance with the applicable Floodplain Management standards. A conditional approval is granted. (Conditions attached).

The plans and materials submitted in support of the proposed development are in compliance with applicable Floodplain Management Standards. Permits is approved.

Applicant has been advised that the proposed development may require a "310" permit (Section 75-7-101 et.seq. MCA) as administered by the Conservation District or "Stream Protection Act" (Section 87-5-501 et.seq. MCA) approval as administered by the Department of Fish, Wildlife, and Parks.

Building Construction Documentation

The certified as-built MSL Elevation of the lowest floor of the structure is _____ feet.

The certified as-built MSL floodproofed elevation of the structure is _____ feet.

Certificates of a registered professional engineer or land surveyor documenting these elevations are attached.

Certificate of Occupancy or

Compliance Issued: _____

FEDERAL EMERGENCY MANAGEMENT AGENCY NATIONAL FLOOD INSURANCE PROGRAM PRECONSTRUCTION CERTIFICATION FORM	
COMMUNITY NAME	COMMUNITY NUMBER
INSTRUCTIONS	
<p>The community permit official completes Section I below. If the structure will be floodproofed, the alternate Floodproofing Certification in Section II below must be completed by either a registered professional architect or engineer. Print or type the information on this form. This form is to be used for new construction and for substantial improvements to existing structures in Zones A1-A30, AH, and VI-V30. The community submits the form to the address listed below as soon as the building permit is issued.</p>	
SECTION I (To be completed by the community permit official)	
PROPERTY ADDRESS (or lot and block number if address is unavailable)	
FIA MAP PANEL ON WHICH PROPERTY IS LOCATED	FIA MAP ZONE IN WHICH PROPERTY IS LOCATED
FIA MAP EFFECTIVE DATE	BASE FLOOD ELEVATION AT THE PROPOSED SITE (Obtain from FIA's map even if more restrictive elevations are required locally)
REQUIRED FIRST FLOOR ELEVATION (Leave blank if Section II is completed)	INDICATE ELEVATION OF BASEMENT FLOOR OR PUT N/A IF NONAPPLICABLE (Leave blank if Section II is completed)
DATE OF PERMIT ISSUANCE	OFFICIAL'S NAME
TITLE	PHONE (with Area Code)
(Signature) _____ (Date) _____	
SECTION II	
INSTRUCTIONS	
<p>Complete only if the structure will be floodproofed at least to the base flood elevation. This Floodproofing certificate may only be completed by a registered professional engineer or architect.</p>	
FLOODPROOFING CERTIFICATION	
<p>I certify to the best of my knowledge, information, and belief, that the structure described above is designed so that the structure will be watertight to an elevation of _____ feet NGVD (mean sea level), with walls substantially impermeable to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy that would be caused by the flood depths, pressures, velocities, impact and uplift forces associated with the base flood.</p>	
<p>My certification assumes that the actual construction of the building will be in strict compliance with the plans presented to me.</p>	
<p>In the event of flooding, will this degree of floodproofing be achieved with human intervention? _____</p>	
<p>Will the structure be occupied as a residence? _____</p>	
<p>Note: If the answer to both questions is Yes, the floodproofing cannot be credited for rating purposes and the information in Section I above must be completely filled in.</p>	
<p>*Floodproofed with human intervention means that water will enter the structure when floods up to the floodproofed level occur, unless measures are taken prior to the flood to prevent entry of water (e.g., bolting metal shields over doors and windows).</p>	
NAME	AFFIX SEAL OR WRITE PROFESSIONAL LICENSE NO. BELOW:
TITLE	
ADDRESS	
(Signature) _____ (Date) _____	



FEDERAL EMERGENCY MANAGEMENT AGENCY NATIONAL FLOOD INSURANCE PROGRAM		
POSTCONSTRUCTION CERTIFICATION FORM		
COMMUNITY NAME	COMMUNITY NUMBER	
INSTRUCTIONS		
<p>The community permit official completes Section I below. Section II may be completed by any of the professionals listed at the beginning of Section II, or by a similarly qualified local permit official. Print or type the information on this form. This form is to be used for new construction and for substantial improvements to existing structures in Zones A1-A30, AH and V1-V30. The community submits the form to the address listed below once the structure is sufficiently completed to fill in Section II.</p>		
SECTION - I (To be completed by the community permit official)		
PROPERTY ADDRESS (or lot and block numbers if address is unavailable)		
FIA MAP PANEL ON WHICH PROPERTY IS LOCATED	FIA MAP ZONE IN WHICH PROPERTY IS LOCATED	
FIA MAP EFFECTIVE DATE	BASE FLOOD ELEVATION AT THE PROPOSED SITE (Obtain from FIA's map even if more restrictive elevations are required locally)	
DATE OF BUILDING PERMIT ISSUANCE	OFFICIAL'S NAME	PHONE (with Area Code)
START OF CONSTRUCTION DATE	TITLE	
(Signature) _____ (Date) _____		
SECTION - II		
INSTRUCTIONS		
<p>Complete only the <u>Elevation Certification</u> unless the structure has been floodproofed at least to the base flood elevation. If floodproofing is used, complete only the <u>Floodproofing Certification</u>. The <u>Elevation Certification</u> may be completed by a registered professional engineer, architect, or surveyor. The <u>Floodproofing Certification</u> may only be completed by a registered professional engineer or architect.</p>		
ELEVATION CERTIFICATION		
<p>I certify that the structure at the property location described above has the first floor at an elevation of _____ feet NGVD (mean sea level).</p>		
<p>Note: Also indicate the elevation of the basement floor, or put N/A for nonapplicable. _____</p>		
FLOODPROOFING CERTIFICATION		
<p>I certify to the best of my knowledge, information, and belief, that the structure is designed so that the structure is watertight to an elevation of _____ feet NGVD (mean sea level), with walls substantially impermeable to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy that would be caused by the flood depths, pressures, velocities, impact and uplift forces associated with the base flood.</p>		
<p>In the event of flooding, will this degree of floodproofing be achieved with human intervention? _____</p>		
<p>Will the structure be occupied as a residence? _____</p>		
<p>If the answer to both questions is <u>Yes</u>, the floodproofing cannot be credited for rating purposes and the elevation certification must be completed instead.</p>		
<p>*Floodproofed with human intervention means that water will enter the structure when floods up to the base flood level occur, unless measures are taken prior to the flood to prevent entry of water (e.g. bolting metal shields over doors and windows).</p>		
CERTIFIER'S NAME	AFFIX SEAL OR WRITE PROFESSIONAL LICENSE NO. BELOW:	
TITLE		
ADDRESS		

(Signature) _____	(Date) _____	



E

**NATIONAL FLOOD
INSURANCE PROGRAM
LITERATURE**



FLOOD INSURANCE

WHO CAN BUY IT?

Flood insurance can be purchased by any property owner in a community participating in the National Flood Insurance Program, whether or not their property is in the floodplain. Flood insurance is not available in communities not participating in the NFIP.

WHAT DOES IT COVER?

Any walled and roofed structure can be insured from direct loss caused by a general condition of flooding (the overflow of a stream or the rapid and unusual accumulation of surface water runoff). Separate policies can be purchased for the contents of insurable buildings.

Items not covered by flood insurance include vehicles, fences, trees, shrubs, crops, docks, bridges or driveways.

Emergency Phase - For communities in the Emergency Phase of the NFIP, there is a maximum amount of \$35,000 worth of coverage available on a structure and \$10,000 on the contents for single family homes. This insurance is subsidized at a rate of \$.40/\$100 for the structure and \$.50/\$100 on the contents. In addition, there is a \$20 "constant" fee added to each policy. For other structures (multi-family or commercial buildings) up to \$100,000 of coverage is available at the subsidized rates.

Regular Phase - When a community enters the regular program of the NFIP, more insurance is available. For single family homes, new limits are \$185,000 on the structure and \$60,000 on the contents. The amounts available are correspondingly higher for buildings in other categories.

For pre-existing structures (prior to a community's entrance into the regular program) the rates for the first layer of coverage (\$35,000/\$10,000) are still at the subsidized rate. For any increased coverage and for all new development coverage, the rate is based actuarially on the structure's risk to flooding. This rate may go as low as \$.05/\$100 and as high as \$25/\$100.

Examples of insurance costs are given in the table on the next page.

The State's requirement to elevate the lowest floor two feet actually decreases the cost of insurance. Allowing a basement to be built doesn't help anyone with the cost of insurance.



LOWEST FLOOR ELEVATION TO BASE FLOOD

REGULAR PHASE - NEW CONSTRUCTION

Single Family Dwelling \$28,000 flood insurance coverage

	rate/\$100	1yr.	10yr.	20yr.	30yr.
+2	\$.10	\$28.	\$280.	\$560.	\$840.
0(BFE)	\$.20	\$56.	\$560.	\$1,120.	\$1,680.
-8 (with basement)	\$25.	\$7,000.	\$70,000.	\$140,000.	\$210,000.

These rates and values are only examples, not for official use.

WHO MUST BUY FLOOD INSURANCE?

Flood insurance must be purchased as a condition of obtaining federal financial assistance for the construction or acquisition of buildings in the identified special flood hazard areas of communities. This requirement includes direct federal financial assistance such as grants, SBA, and FHA loans, VA and FHA mortgage loans, and if the community is participating in the National Flood Insurance Program, also includes conventional construction and mortgage loans from federally insured, regulated or supervised lending institutions, e.g., banks insured by FDIC, savings and loan institutions insured by FSLIC or regulated by the Federal Home Loan Bank Board, credit unions insured by the National Credit Union Administration, banks regulated by the Comptroller of the Currency or the Federal Reserve Board. Lending institutions are more and more becoming the controlling factor in floodplain management by requiring insurance to receive loans.

WHERE CAN YOU BUY IT?

Any local agent deals in property insurance can sell national flood insurance. If an agent has questions about the insurance aspects of the NFIP, he may use the following TOLL FREE NUMBERS:

NON-CLAIMS BUSINESS:
(800) 638-6620

CLAIMS BUSINESS:
(800) 638-6580

NATIONAL FLOOD INSURANCE PROGRAM PUBLICATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY, BLDG. 710, DENVER FEDERAL CENTER
DENVER, COLORADO 80225 PHONE: (303) 234-6582

Please send the indicated publications on the National Flood Insurance Program (NFIP) to:

NAME: _____

POSITION: _____

ADDRESS: _____

TELEPHONE: _____

GENERAL PROGRAM INFORMATION

- _____ Questions and Answers NFIP
- _____ List of Communities with Flood Hazard Maps
(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
- _____ National Flood Insurance Program Application Forms
- _____ Coordination During Flood Insurance Studies
- _____ Entering the Regular Program
- _____ Flood Emergency and Residential Repair Handbook

FLOODPLAIN MANAGEMENT

- _____ Model Floodplain Management Ordinance for Emergency Program Communities
- _____ Model Floodplain Management Ordinance for Regular Program Communities
- _____ Floodplain Management Ordinance Administrative Procedures
- _____ Elevated Residential Structures (Architectural Manual)
- _____ The Floodway: A Guide for Community Permit Officials
- _____ Economic Feasibility of Floodproofing -- Analysis of a Small Commercial Building
- _____ Flood Prone Areas and Land Use Planning

FLOOD HAZARD MAPS

- _____ Flood Hazard Map Order Forms
- _____ How to Read a Flood Hazard Boundary Map (FHBM)
- _____ How to Read a Flood Insurance Rate Map (FIRM)
- _____ Conditions and Criteria for Map Amendments and Revision

PROGRAM LEGISLATION AND REGULATIONS

- _____ NFIP Legislation (P.L. 90-448, 91-152, 93-234)
- _____ NFIP Rules and Regulations
- _____ E.O. 11988 Floodplain Management Guidelines for Federal Agencies
- _____ Lending Institution Compliance Procedures
- _____ Sample Flood Insurance Policy



F

FLOODWAY

THE FLOODWAY

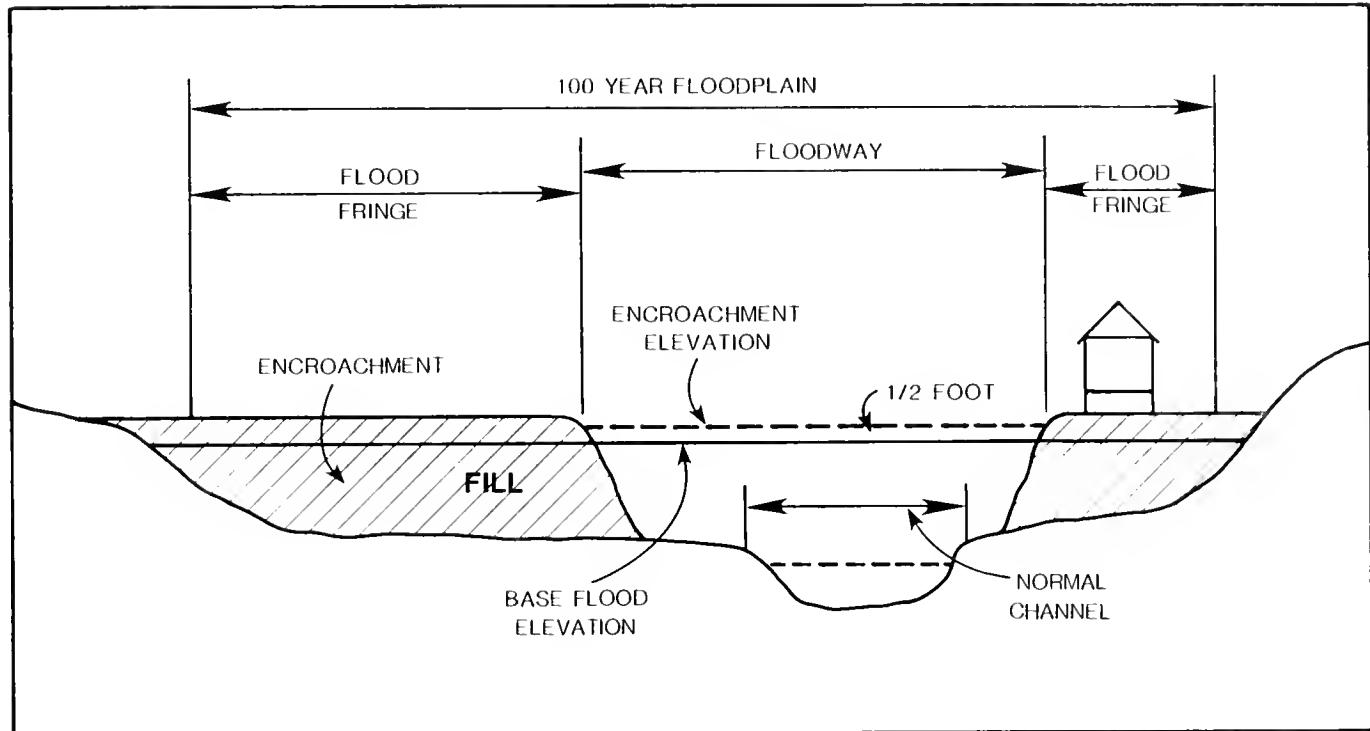
The floodway is the channel of a stream, plus any adjacent floodplain areas, that must be kept free of encroachment in order that the 100-year flood be carried without substantial increases in flood heights.

THE PURPOSE OF THE FLOODWAY

The National Flood Insurance Program requires that new structures be protected from flooding to the Base Flood Elevation (BFE). If the BFE is increased, these structures are no longer protected from the Base Flood.

Base flood elevations can be increased by obstructions in the floodplain. To avoid the possibility of significantly increasing the BFE, the NFIP calls for a community to reserve a part of the floodplain. This reserved area is called the floodway. (A significant increase has been determined by the State of Montana to mean a maximum of one-half foot increase in the Base Flood Elevation. This means that if all floodplain areas outside the floodway are filled or obstructed, the base flood elevation will not be raised by more than one-half foot.)

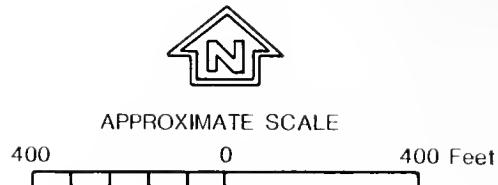
A community must prohibit development in the floodway if the proposed development would cause a rise in base flood elevations. Reserving part of the floodplain for the floodway divides the floodplain into two parts: the floodway and flood fringe.



HOW THE FLOODWAY IS DETERMINED

A floodway study is usually done with a computer. The floodway boundary is determined by "squeezing in" the floodplain boundary on the computer until the base flood is raised one-half foot. This simulates the effect of building a "wall" from both sides of the floodplain toward the center.

500 Year Flood Boundary
100 Year Flood Boundary
FLOODWAY
100 Year Flood Boundary
500 Year Flood Boundary



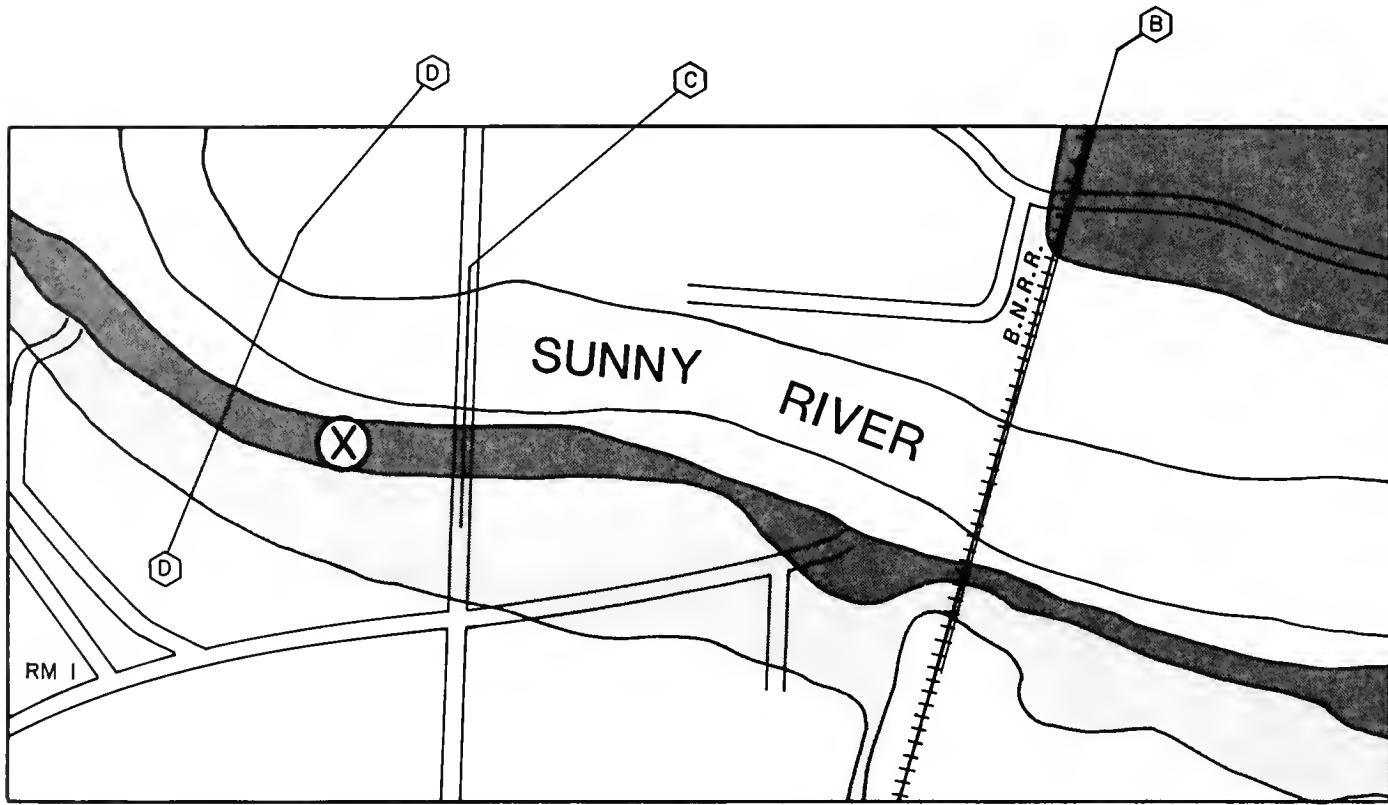
FLOODWAY FLOOD BOUNDARY AND FLOODWAY MAP

Cross Section Line



Elevation Reference Mark

RM 1

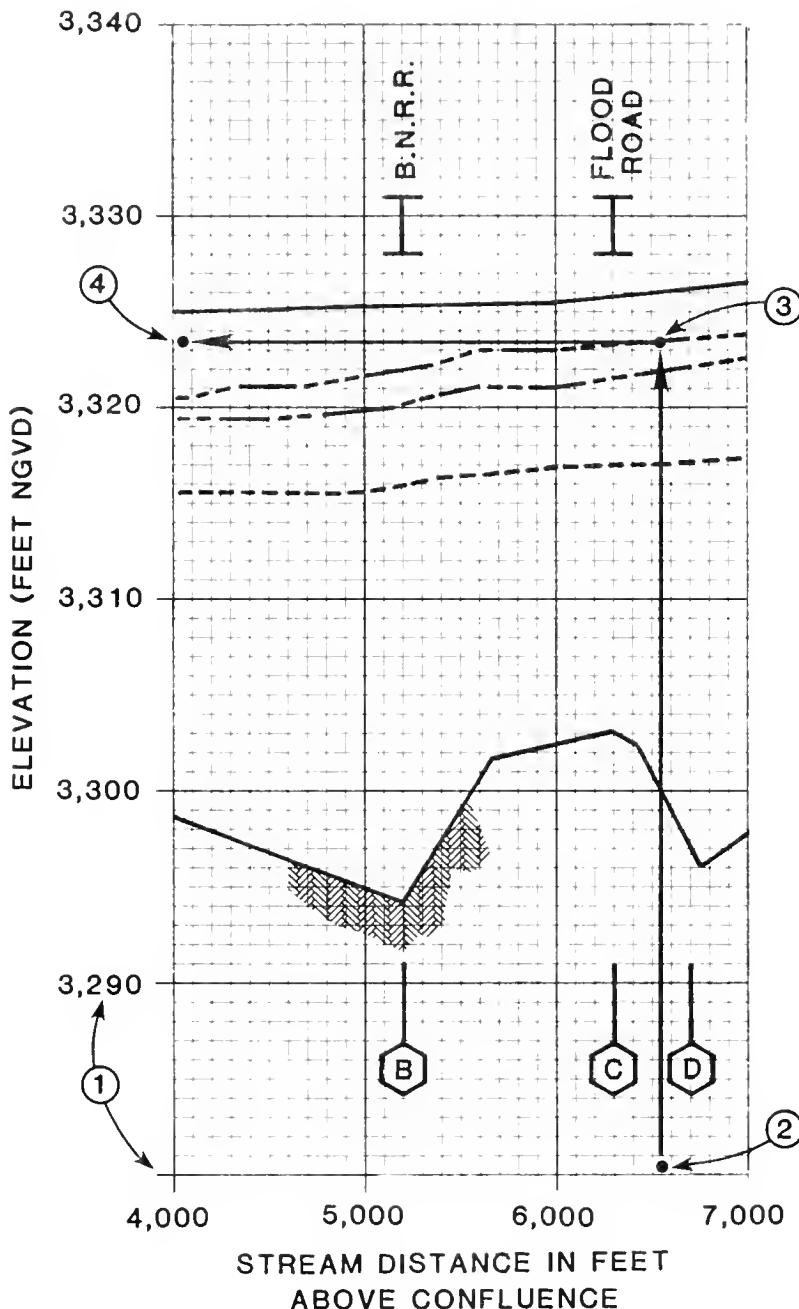


A Flood Boundary Floodway Map (FBFWM) is used for regulatory purposes by the community. It shows the floodway (the white areas between the shaded areas) and floodplain (the darker shaded areas are the limits of the 100 year event and the lighter shades show the limits of the 500 year event) boundaries.

To locate a site on the map, measure the distance on the ground between the site and an identifiable point (bridge, river channel, reference mark, etc.) Using the map scale, convert these figures and plot the site on the map. For example, point X is 200 feet west of the Flood Road. It is located in the floodway fringe.

Cutting across the floodplain are a series of lines, tagged with letters, called cross sections. Flood elevations are developed for each of the cross sections and are displayed on flood profiles.

Communities use the information from the Floodway Maps and the flood profiles to regulate development in the floodplain to meet the standards of the NFIP and State.



A flood profile is a chart which shows the elevation of the water surface during a flood event at particular locations along a river or stream. Flood Insurance Studies determine the elevation at the cross section marks for the 10, 50, 100 and 500 year events. The cross section location can be more easily seen on the Flood Boundary Floodway Map on the previous page.

READING A FLOOD PROFILE

- First, check the scale. On the example above, each line on the horizontal axis represents 100 feet along the stream. The vertical axis lines represent one foot elevation increments above the mean sea level.
- Next, locate the point of concern on the horizontal axis. On the example, the point of concern is about 200 feet upstream from Flood Road (This is the same point referred to on the FBFWM on the previous page).
- Now, from the point of concern follow the vertical line to the intersection of the 100 year Flood event line.
- Finally, to determine the elevation, follow the horizontal line to the vertical axis. At the point of concern, the 100 year elevation is 3323.5 FT MSL.



APPEALING

A FLOOD INSURANCE MAP

Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) show base flood information in a community according to the best data available. An appeal is a formal request to change one of these maps to:

- correct an error,
- reflect a change in the flood situation, or
- reflect better data.

Appeals To Correct An Error

1. If a map inaccurately shows a community's streets or corporate limits, or if new annexations change corporate limits, the local government should send a new map to FEMA. (This can be done when the community submits its annual report).
2. If a detailed contour map shows errors in the floodplain boundaries, a copy of the more detailed map should be submitted. If the base flood elevation is known (or has been more accurately computed since the FHBMs was made), it should be submitted with the appeal. Where the best available maps do not clearly show a property higher than the base flood elevation, a certificate of elevation is needed. The certificate must be sealed by an engineer or surveyor and must show the elevation of the lowest finished grade adjacent to the structure or the lowest floor (including basement), whichever is lower. Buildings with basements below the base flood elevation will not have appeals granted.

Appeals To Reflect A Change In The Flood Situation

1. A map may be changed to reflect new flood protection works built since the map was prepared. Plans for large projects usually include after-project flood maps that can be used to readily amend a map. However, in most cases a map cannot be changed until the project is actually constructed and/or operating. Furthermore, many small projects, such as one or two retention reservoir or channel improvements, will not have enough of an effect on the base flood to warrant a map change.

2. If there has been a substantial amount of new filling adjacent to the floodplain boundaries, a certified "as built" topographic map should be submitted after the filling has been completed. Filling individual building sites that create "islands" in the floodplain is not adequate for appealing a FIRM. It should be noted that filling in the floodplain needs a development permit from the community participating in the National Flood Insurance Program. Such a permit will not be

granted unless the community is assured that the fill will bring the building sites up to two feet or above the base flood elevation and will not obstruct the flow of floodwaters.

Appeals To Reflect Better Flood Data

1. A FIRM is prepared as part of a detailed Flood Insurance Study based on scientific analyses of the base flood. A FHBM is based on the best available data to the Federal Insurance Administration. Persons wishing to appeal these maps (either the Base Flood Elevation or boundaries) must provide sufficient technical justification showing the maps are incorrect. The challenge must be based on better or more accurate study techniques.

2. Appeals which affect only one or two properties need to provide:

1) an actual (stamped) copy of the recorded plat map of the property showing official recordation and proper citation; 2) base flood elevation data (information based solely on floods of record or the property's history of flooding is not sufficient); 3) ground elevation data: an accurate map or elevation certificate. (NOTE: topographic maps are normally accurate to within 1/2 the contour interval.)

Submitting The Appeal

All appeals should include a copy of the FIRM or FHBM being challenged. Submit to:

Director, Engineering Division
Office of Floodplain Management
Federal Emergency Management Agency
Washington, D.C. 20472

A courtesy copy of any appeals should be sent to:

DNRC
Floodplain Management Section
32 South Ewing
Helena, Montana 59620

Federal Emergency Management Agency
Region VIII
Denver Federal Center, Bldg. 710
Denver, Colorado 80225

If an appeal for a change in a flood insurance map is successful, FEMA will issue a new map. When the appeal affects only one parcel, the map will not be changed but the FIA will issue a "Letter of Map Amendment" stating that the particular property is not subject to the base flood.